

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANTS AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 18,075
18,076
18,077

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 30 1963

CHARLEY WILLIAMS,
DONALD L. WASHINGTON,
WILLIAM JONES,

Nathan J. Paulson
CLERK

Appellants,

v.

UNITED STATES OF AMERICA,

Appellee.

Appeal from Judgment of United States
District Court for the District of Columbia

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(i)

STATEMENT OF QUESTIONS PRESENTED

1. Was it error for the Trial Court to hold that a Search Warrant for the entire premises was not a general warrant, where others were living in the premises not associated with the alleged unlawful venture?

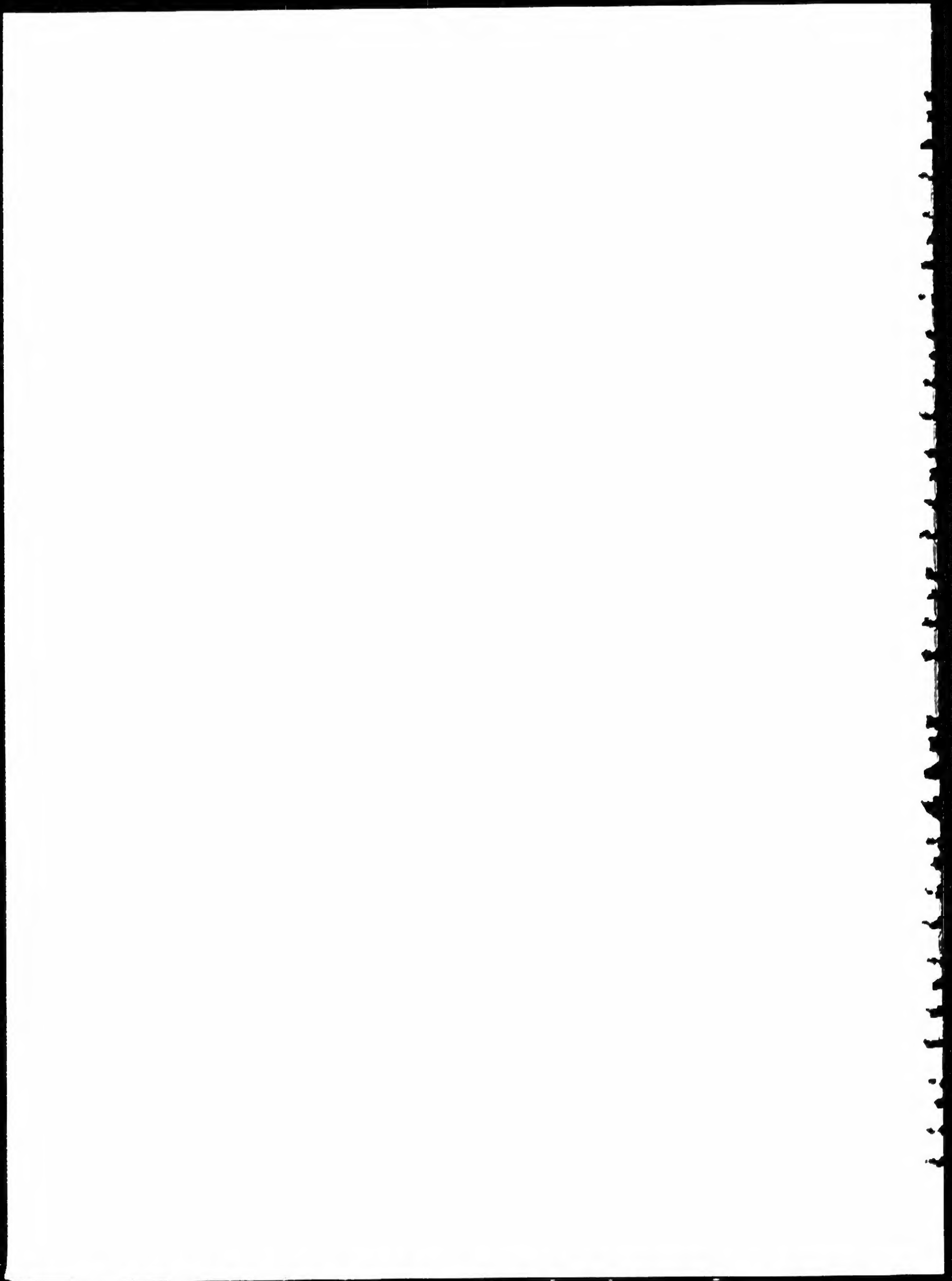
2. Was it error for the Trial Court to hold that an arrest warrant for the defendant, William Jones, was sufficient in law, where the probable cause suggested was only by reference to a distinct and separate document?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 18,075
18,076
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CHARLEY WILLIAMS,
DONALD L. WASHINGTON,
WILLIAM JONES,

Appellants,

v.

UNITED STATES OF AMERICA,

Appellee.

Appeal from Judgment of United States
District Court for the District of Columbia

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is based on Title 28, U.S. Code, Section 1291, and Rule 37 of the Federal Rules of Criminal Procedure.

STATEMENT OF THE CASE

On July 3, 1962, the Morals Division of the Metropolitan Police Department assigned certain of its officers to conduct an investigation

in the 1500 block of Ninth Street, N.W. During the month of July the movements of appellants were observed on eight (8) days. On August 1, 1962, the officers applied to the United States Commissioner for the District of Columbia for arrest warrants for appellants, and a search warrant for 134 R Street, N.E. These warrants were issued. The search warrant for the indicated address was requested for the "entire premises." The raid was conducted on August 1, 1962. The appellants Jones and Washington were arrested in the back yard and taken to the basement of the premises (Tr. 126). Appellant Williams was found in a closet on the first floor and was also removed to the basement (Tr. 127). At one time or another, an officer was in every room in the house (Tr. 155), as officer Goldston testified, "during the extended search" (Tr. 156). Goldston entered one room on the second floor where he found a man in bed while he found no number paraphernalia in the room (Tr. 157), he removed the man to the basement (Tr. 158). The man informed the officer that he lived there (Tr. 159). Bernice Blandon testified that her daughter also lived in the premises (Tr. 201) and that there were four bedrooms and bath on the second floor (Tr. 210). Sgt. Lockwood testified that Bernice Blandon had been upstairs during the search of the first and second floors, and that after that search was concluded Blandon was brought to the basement (Tr. 220). Lockwood asked if she had a rooming house license, and was informed that while she had roomers there, she had no license (Tr. 220). Lockwood told her he didn't think everybody that was in the premises was involved (Tr. 221). He asked Blandon if one of the roomers, Freeman Davis, was involved and she stated he wasn't, that he was employed by the government (Tr. 222). She was questioned about another roomer, Louise Colbert. "I asked Bernice if she was involved in any way. She said just a roomer there. I asked Miss Colbert if that was right and she said, 'that is correct'" (Tr. 222). Lockwood further testified that he talked to two roomers and Bernice's daughter after they had searched the first and second floor (Tr. 226). Lockwood stated that the roomer, Louise Colbert, was in

the back yard at the time of the raid and he saw Durham and Goldston bringing Washington and Jones down the basement steps (Tr. 238).

Motions to suppress evidence seized under Search Warrant were heard by the Trial Court and overruled as to all of the Appellants.

In addition, Motion on behalf of the Appellant, William Jones, was made on the basis that he was not arrested in the premises searched but in the back yard under a Warrant of Arrest issued without probable cause in Law.

At the time of the arrest in the back yard no evidence of a contraband nature was found on or about the Appellant Jones (Tr. 126, 141).

Following the arrest in the back yard the Appellant Jones was brought into the basement of the house by the arresting officer.

STATUTES AND RULES INVOLVED

Amendment IV - Constitution of the United States

Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Rule 41 (c) (e), Federal Rules of Criminal Procedure.

STATEMENT OF POINTS

1. It was error for the Trial Court to hold that a Search Warrant for the entire premises was not a general warrant, where others were living in the premises not associated with the alleged unlawful venture.

2. It was error for the Trial Court to hold that an arrest warrant for the defendant, William Jones, was sufficient in law, where the probable cause suggested was only by reference to a distinct and separate document.

SUMMARY OF ARGUMENT

Appellants first contend that the Search Warrant issued was a general one and not one "particularly describing the place to be searched," as required by the Fourth Amendment of the Constitution of the United States.

The record is uncontroverted that others resided in the premises searched (Tr. 157, 201, 222). The warrant commanded a search of the entire premises, and a search of each floor was conducted as the evidence shows (Tr. 155). That the rooms of others were invaded is apparent in the transcript of testimony. A warrant which permits such a search was of necessity a general one, and not one designating specifically the place to be searched as required by the Fourth Amendment. The raiding officers were of the opinion that not all the occupants of the house were engaged in the operation of a lottery (Tr. 221).

The Warrant of Arrest for Appellant Jones contained no proper statement setting forth any probable cause.

ARGUMENT

I.

The search warrant for premises 134 R Street, N.E., was a general one in violation of the Fourth Amendment of the Constitution.

Appellants respectfully represent to this Court that the search warrant issued by the United States Commissioner on August 1, 1962 was a general one and as such was in violation of the mandate of the Fourth Amendment of the Constitution of the United States. It did not "particularly" describe the premises searched.

As set forth in the application for the search warrant, and on the face of the warrant itself, the "entire premises" 134 R Street, N.E., was the object of the search. The evidence at the trial disclosed that the "entire premises" was not being used unlawfully; that there were others living in the house not associated in an unlawful enterprise, and that the officers did not know where in the premises appellants were to be found; and that a general search was conducted.

As described by Officer Goldston, at one time or another, an officer was in every room in the house (Tr. 155); during the "extended search" (Tr. 156). The testimony discloses that the occupants of the premises were herded from the first and second floors, as well as the back yard, to the basement where they were interrogated concerning their participation, if any, in the alleged numbers operation. One man, for instance, was found in bed on the second floor, his room was searched and he was taken to the basement (Tr. 157-158). It developed that he was a government employee on a day off (Tr. 222). Sgt. Lockwood asked Bernice Blandon if she had a rooming house license, and was informed that while she had roomers there, she had no license (Tr. 220).

It is apparent from the evidence that the warrant was a general one and an exploratory search of the premises was conducted. It is

also obvious that the "entire premises," was not being used unlawfully.

In United States v. Epstein, 33 F.2d 982, with respect to a warrant for the entire premises, where there were others not associated with the unlawful enterprise:

"Suppose in the proceeding herein, the warrant had issued not to the agent who made application therefor, but to some other agent or officer, would the warrant, in such circumstances, have been sufficiently intelligible and definite on its face to enable such officer to make a reasonable search within the limits of the Fourth Amendment and the statute? Clearly not. Such agent would have been compelled under the command of the warrant to search the premises of innocent occupants of the loft building. It follows such a search would have been unlawful."

In the instant case, the warrant was not sufficiently intelligible and definite on its face to enable the officers who obtained the warrant, to conduct a "reasonable" search within the limits of the Fourth Amendment. Certainly, the procedure followed by the raiding officers in this case, under the protection of a "general" warrant could not be defined as "reasonable." It is no answer to exploratory searches to say that in order to become immunized to warrants for "entire premises," gambling violators could set up in a house with a few roomers and obtain maximum protection. This Court has reviewed cases which were predicated on warrants for "basement" of designated premises as well as for "first" or "second" floors in private homes. In such cases at least, the applying officers made some effort to "localize" the alleged misconduct, and certainly must have been aware that "entire premises" warrants were too general, otherwise, designation of a certain portion of the premises would have been omitted.

The same objection was taken to the warrant in Minovitz v. United States, 112 U.S. App. D.C. 21, 298 F.2d 682, and in discussing the objection stated:

"Appellant contends this warrant was invalid because the premises were occupied by other persons who were apparently not associated with the unlawful venture. But, the police, on two occasions had made inquiry as to the occupancy of the building and on both occasions their investigation had revealed that the house was a private dwelling and not an apartment or rooming house."

There was no such "investigation" conducted here to determine whether the privacy of others would be invaded in obtaining a general warrant.

Again, it is respectfully urged, that the term "rooming house" should not be controlling, where, as here, the roomers were not of sufficient numbers to require a rooming house license. On the other hand, if it appeared there were ten (10) roomers within the premises, a violation of the rooming house statute by the operator should not give comfort to officers of the law in by-passing the mandate of the Fourth Amendment.

This Court upheld the seizure of the evidence in Minovitz on the further ground that the evidence was found in the room in which appellant was arrested and was, therefore, incident thereto. Here, none of the appellants were arrested in the basement of the premises where the evidence was seized.

In Shore v. United States, 49 F.2d 519, 60 App. D.C. 137, it was argued that the premises actually consisted of defendant's garage and tire shop and also a small lunch room occupied by someone else. This Court stated:

"It is admitted on the record that the defendant Shore owned the whole building, and it satisfactorily appears that neither the lunchroom nor the upstairs was searched."

Thus, Shore, is distinguishable here, for in the instant case the entire premises was searched, nor was there evidence here that the instant premises were owned by those involved.

II.

The Warrant of Arrest for Appellant Jones contained no proper statement setting forth any probable cause.

The Affidavit on which Arrest Warrant for Jones was based was insufficient in Law.

The only attempt at setting forth probable cause in the arrest of Appellant Jones was the following:

"And the complainant states that this complaint is based on the facts set forth in the Affidavit attached to Search Warrant in Comm's Docket 6 Case 73 and made a part hereof." (R Arrest Warrant for William Jones.) The Affidavit attached to Search Warrant did state that the Appellant was seen going in and out of premises 134 R Street, N.E., on certain occasions in some instances with bulging pockets.

It is to be noted, however, that the Affidavit covered four (4) pages and was mainly concerned with alleged activities of others than the Appellant Jones (Search Warrant).

It is fundamental that not only as to a Search Warrant, but likewise as to Warrant of Arrest, that the existence of probable cause must be set forth to justify the issuance of the Warrant.

It is likewise fundamental that an individual cannot be arrested or searched for the alleged criminal act of others unless such is shown to be in fact a joint enterprise.

This Court in Schencks v. United States, 55 App. D.C. 84, F.2d 185, long ago stated that no warrant shall issue except on probable cause.

Again this Court in Schoeneman & Markham, Jr. v. United States,
F.2d 173, stated:

"But where, as here, the commissioner's judgment is predicated solely on affidavits, a court is not relieved from making its own judgment as to whether the affidavits provide a 'substantial basis for him to conclude that (the evidence was) probably present in the (home).'" Jones v. United States, 362 U.S. 257, 271 (1960).

In the case of Wong Sun, et al. v. United States, 9 L ed 2d pp. 441,
the Court in its opinion on page 450 stated:

"It is basic that an arrest with or without a warrant must stand upon firmer ground than mere suspicion."

In this same case (supra) the Supreme Court further stated:

"The history of the use, and not infrequent abuse, of the power to arrest cautions that a relaxation of the fundamental requirements of probable cause would 'leave law abiding citizens at the mercy of the officers' whim or caprice.'"

It is interesting to note that the Trial Judge in the instant case when the Wong Sun, et al. case (supra) was called to his attention observed:

"I must admit that the opinion shakes me."
(Tr. 22)

CONCLUSION

It is respectfully represented that the search warrant for the premises here obtained, was a general warrant and did not contain the particularity required by the Fourth Amendment, and further it is likewise respectfully urged that the Warrant of Arrest for the Appellant Jones was invalid in Law.

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WILLIAM H. COLLINS

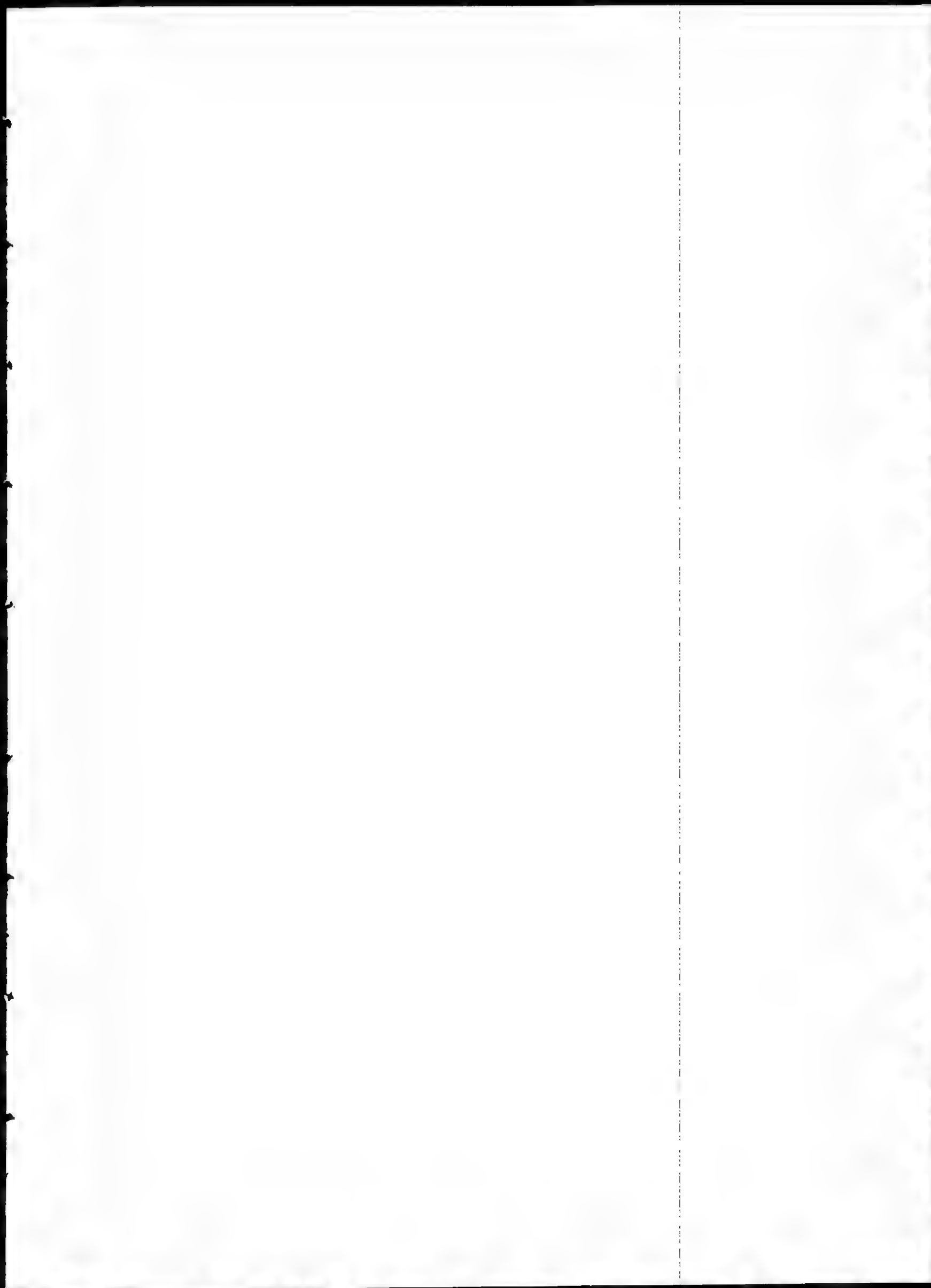
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JOINT APPENDIX

[Filed November 9, 1962]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America)	GJ. 1234-62	1000-62
v.)	Commissioner's Docket No. 6	
William Jones)	Case No. 77	
n/m/59)		

WARRANT OF ARREST

To Chief of Police or any Member of MPDC:

You are hereby commanded to arrest William Jones (here insert name of defendant or description), and bring him forthwith before the nearest available United States Commissioner to answer to a complaint charging him with unlawfully set up and promote a policy lottery and possess number slips in Washington D.C., on July 3, thru July 31, 1962 (here describe offense charged in complaint), in violation of DCC Title, 22, Section 1501, 1502.

Date August 1, 1962.

/s/ SAM WERTLEB
United States Commissioner.

(Here insert designation of officer to whom warrant is issued.)

RETURN

Received August 1, 1962 at 3:35 P.M., and executed by arrest of William Jones, N/M 60 yrs. at 3:35 P.M. on August 1, 1962.

/s/ Pvt. Clay W. Goldston
Metropolitan Police Dept.

[Filed November 9, 1962]

UNITED STATES COMMISSIONER

DISTRICT OF COLUMBIA

Record of Proceedings in Criminal Cases

GJ. 1234-62 1000-62

BEFORE Sam Wertleb

U.S. Court House, Wash. 1, D.C.

Name of Commissioner

(Address)

Commissioner's Docket No. 6, Case No. 77

The United States

vs.

William Jones

Complaint filed on Aug. 1, 1962

by Clay W. Goldston & Julious

Durham Official title Pvts. Morals

Div. MPDC, charging violation of

United States Code, Title *, Sec.

_____, on ** 19 ___, at Washington

in the _____ division of the

district of Columbia, as follows:

* * From July 3, 1962 thru July 31,

1962 violation of Title 22 D.C. Code

Sections 1501 & 1502 - Unlawfully

set up and promote a policy lottery

and possess number slips

(Here insert brief summary of
facts constituting offense charged)

Warrants or Summons Issued:

Date August 1, 1962 Warrant/~~Summons~~ for William Jones

(Name of defendant)

to (name and title of officer)

Chief of Police or any Member of MPDC

Substance of return

Arrest of William Jones on August 1, 1962

* * *

Proceedings on First Presentation of Accused to Commissioner:

Date August 2, 1962 Arrested by MPDC, on warrant of Comm. Wertleb

* * *

Proceedings taken. Complaint prepared. Defendant was informed of the complaint and of his right to have a preliminary hearing and to retain counsel. Defendant was not required to make a statement and was advised that any statement made by him may be used against him.

outcome cont. to Sept. 13, 1962 request of deft. to consult counsel-	
no *	

* * *

* * *

Preliminary Examination:

✱ ✱ ✱

* * * Def. counsel (conferring with AUSA Smithson in this matter) - no objections. Oct. 25: AUSA Rauh for Govt. Case Ctd. to Nov. 8, req. of Def. - same date as set for co-defs.

* * *

* * * by surety (names) Meyer Wein-
stein, Address 406 5th St., N.W. * * * who justified by affidavit
 November 8, 1962. * * * Certified to be a correct transcript.

Made this 8th day of November, 1962.

Transmitted to Clerk of United States District Court for the
District of Columbia, November 9, 1962.

/s/ Sam Wertleb

United States Commissioner.

[Filed Nov. 26, 1962]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Holding a criminal Term

Grand Jury Sworn in on November 6, 1962

The United States of America	:	Criminal No. 1000-62
v.	:	Grand Jury No. 1232-62, 1233-62
	:	1234-62, 1235-62
Charley Williams	:	
Donald L. Washington	:	Violation: 22 D.C.C. 1501, 1502,
	:	1505
William Jones	:	(Operation of lottery, possession
Bernice E. Bandon	:	of numbers slips, maintaining
	:	gambling premises)

The Grand Jury charges:

Continuously during the period from about July 3, 1962, to about August 1, 1962, within the District of Columbia, Charley Williams, Donald L. Washington, William Jones and Bernice E. Bandon were concerned as owners, agents, and clerks, and in other ways, in managing, carrying on and promoting a lottery known as the numbers game.

SECOND COUNT:

On or about August 1, 1962, within the District of Columbia, Charley Williams, Donald L. Washington, William Jones and Bernice E. Bandon knowingly had in their possession and under their control, notations, records, receipts, tickets, certificates, bills, slips, tokens, papers and writings, current and not current, used and to be used in a lottery known as the numbers game.

THIRD COUNT:

On or about August 1, 1962, within the District of Columbia, Donald L. Washington, William Jones, Charley Williams and Bernice E. Blandon did knowingly, as lessee, agent, operator and occupant, maintain, aid and permit the maintaining of a gambling premises located at 134 R Street, Northeast.

A TRUE BILL:

/s/ William J. Youden
Foreman

/s/ David C. Acheson

Attorney of the United States in and
for the District of Columbia

[Filed November 30, 1962]

PLEA OF DEFENDANT

On this 30th day of Nov. 1962, the defendants 1-Charley Williams, 2-Donald L. Washington, 3-William Jones, 4-Bernice E. Blandon, appearing in proper person and each without counsel, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, each pleads not guilty thereto.

By direction of

MATTHEW F. McGUIRE

Presiding Judge

Criminal Court # Assignment

* * *

[Filed August 27, 1963]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

Washington, D. C.
Wednesday, March 20, 1963

The above-entitled cause came on for hearing before THE HONORABLE GEORGE L. HART, JR., United States District Judge, without a jury, at 2 p.m.

* * * * *

4 THE COURT: All right. I will approve and will try the case without the jury.

MR. SMITHSON: Now, at this time, Your Honor, as I understand from Mr. Wood, Mr. Hughes and Mr. Collins, the question is of the sufficiency of the affidavit on the issue of probable cause for the magistrate, the Commissioner, to issue the warrant.

* * * * *

7 THE COURT: In other words, then the legal issue would be raised as to whether or not the affidavit shows sufficient probable cause for the issuance of the warrant?

MR. SMITHSON: That is correct, Your Honor.

THE COURT: If it does not, then the evidence that was seized under the warrant would have to be suppressed.

MR. SMITHSON: That is correct, Your Honor.

* * * * *

10 MR. WOOD: * * * -- our contention is this is a general search warrant and not a specific warrant, inasmuch as it permits the search of the entire premises, and the entire premises were not used in the operation of a lottery. There were other people living in the house not associated with the lottery.

* * * * *

11 THE COURT: Then the question of whether or not the premises were sufficiently identified. I suppose that will depend a great deal on the size of the place.

You couldn't say Westchester Apartments.

MR. SMITHSON: No, Your Honor, and that is the reason why I thought we could expedite this, because when Your Honor receives the paper, it will identify the premises in question on this date as the premises 134 R Street, Northeast, the entire premises, as they are occupied by the defendant Blandon, Bernice Blandon, which is shown according to the records of the Washington Address Telephone Directory as a private dwelling.

* * * * *

19 MR. COLLINS: It is fundamental, I think, that the participants of the crime have to be joint participants.

Now, if James Smith and somebody else were seen going into a premises, either with or without bulging pockets, or however it is described, brown bags -- and there isn't any sign of William Jones around there at the time, then I say to you that that cannot be made a basis for a warrant of arrest of William Jones.

In other words, I submit that they have issued a warrant, the Commissioner has issued a warrant under circumstances that he had to be prejudiced by the entire contents of this affidavit, which touches a great many things independent of Jones, and which concededly he had nothing to do with.

Now, he is not charged in that complaint as a conspirator. He is charged alone. There is no conception in which the acts of the others, either alleged or from reading of it, could be conceived as overt acts that would be binding on him because, Number One, in the warrant itself, in the complaint supporting the warrant itself, there is no charge
20 of conspiracy.

It would have to be a charge of conspiracy before even the overt act could be shown.

Now, I submit you have a picture where a man is arrested with a warrant that is based not on his activities alone, but based on the activities of a great many other people, when the affidavit itself shows he wasn't even present under circumstances that he could be charged with liability for their actions.

THE COURT: Let me ask you this, Mr. Collins, and see if I can give you an example.

Suppose the police are watching a house and they see Jane Doe go in every afternoon at four o'clock and come out at four o'clock in the morning.

If that is all they saw and they came to try to get an arrest warrant on Jane Doe for prostitution, you wouldn't issue it.

On the other hand, suppose they included in there that they saw five other girls in there, going in, and that they had evidence that prostitution was going on in the house, and gave the evidence, and you put all that in an affidavit, and then Jane Doe's going in there and coming out at that time, that would be grounds to issue a warrant, wouldn't it?

21 Without it, it wouldn't be.

Now, I don't see any reason why you can't build up as probable cause for your warrant, your full logical reasons for believing, and having probable cause to believe, that gambling, numbers slips are being handled in there.

Then when one individual goes in with bulging pockets and comes out, that taken with the other evidence would indicate he is probably connected with it.

MR. COLLINS: Well, I say to Your Honor that that is something that can be considered as a basis overall for the search warrant and this is the thing that the search warrant was issued on.

But I submit it is not a proper basis of an arrest warrant where the alleged criminal activity in there, in that search warrant affidavit, is by many others in which there is no connection.

Now, certainly it isn't illegal for a person to walk into a house or to walk out of a house, in itself.

THE COURT: No, but to constantly go in with bulging pockets and coming out unbulging, in a house where there is other quite convincing evidence that a numbers operation is going on, that can become probable cause whereas without the other evidence, you would not have probable cause at all.

* * * * *

22 MR. COLLINS: Well, I mention that, Your Honor, but moreover,
23 independent of those aspects, I would call Your Honor's attention
to the affidavit itself, if you have it before you.

THE COURT: Actually, I do not see many of these, but I am very
much impressed with this one.

MR. COLLINS: Does Your Honor have the affidavit before you?

THE COURT: Yes, I do, four pages of it.

* * * * *

34 THE COURT: Well, I will deny your motion, Mr. Collins. I think
there is certainly adequate, more than adequate, probable cause for
issuing both the search warrant and the arrest warrant for William
35 Jones.

* * * * *

ALBERT G. FIELDER

* * * * *

47 CROSS-EXAMINATION

* * * * *

55 [BY MR. WOOD:]

Q. Did Williams say anything at the time she made that statement?

56 A. He said he didn't know anything about it.

Q. Said he didn't know anything about what? A. About renting
the apartment or the room down in the basement.

* * * * *

60 RAYMOND McMULLEN

* * * * *

DIRECT EXAMINATION

* * * * *

[BY MR. SMITHSON:]

Q. Were you so assigned and working on August 1, 1962? A.
Yes, sir, I was.

Q. Did you with a party have occasion to go to 134 R Street,
Northeast? A. Yes, sir, I did.

Q. Did you enter those premises? A. Yes, sir, I did.

Q. With Lieutenant Fielder and others? A. Yes, sir.

61 Q. Did you have occasion, Officer McMullen, to go through these premises? A. Yes, I did.

Q. From top to bottom? A. From the first floor to the basement.

Q. All right. Did you go above? A. Not above the first floor.

Q. When you entered these premises, did you enter on the first floor, the front? A. Yes, sir, we did.

Q. Is there a stairway leading to the second floor? A. I don't quite remember, sir.

Q. Let me ask you, did you see any mail boxes on those premises?
A. Did I see any mail boxes?

Q. Yes. In the entrance? A. No, I didn't.

Q. Did you see any doors, locked doors leading to any second floor to those premises? A. I don't remember, sir.

Q. Did you see any indication of any apartments in those premises? A. None that I can remember.

62 Q. Now, limiting yourself then to the first floor and the basement, would you describe the first floor to us? A. As you come in from the street into the premises, there was a short hallway and immediately to my left there was a room which was Bernice Blandon, the defendant's, the rear bedroom, which she claimed to be her bedroom.

This sort of had like French doors, glass doors.

Proceeding past this room --

THE COURT: Wait a minute. Were those French doors facing on the hall?

THE WITNESS: Yes, sir, they were facing on the hall.

THE COURT: Go ahead.

THE WITNESS: Proceeding to go further down, there was another opening which was being used as a parlor or some sort of living room.

MR. WOOD: May I interrupt, Your Honor, to ask whether or not that is on the same side of the house as the bedroom that you described?

THE COURT: Yes. I was going to ask the same thing.

THE WITNESS: Well, this is partly -- occupying one wall of the bedroom and the other part of the room is opening as you come into the hallway.

THE COURT: You mean part of the room would be opening off the bedroom on the left and part of the room would be straight ahead
63 of you --

THE WITNESS: Yes.

THE COURT: -- as you went down the hall?

THE WITNESS: That is correct, yes, sir.

Immediately behind this room was, to the best of my knowledge, a closet of some sort, a storage room.

Then a bathroom and then a kitchen and a back door leading outside.

BY MR. SMITHSON:

Q. Was there a stairway to the basement? A. Yes, sir, there was.

Q. Where was that? A. This was -- the stairway was to the left as you came into this room that was being used as sort of a living room.

Q. That was the room that was behind the bedroom -- A. That's right.

Q. --and straight ahead of you as you went down the hall? A. Yes, that is correct. This room was being used as a bedroom. I don't know if that is what it was intended for.

Q. Let me ask you this, did you talk to anyone on those premises as to whose premises they were? A. Yes, I did.

64 Q. To whom did you speak? A. The defendant Blandon.

Q. What, if anything, did she say about the premises? A. She stated that these premises were hers, that she lived here, this was her bedroom. Everything that was in this house was hers, until we took her downstairs and questioned her about the numbers slips, adding machines, and things of that nature.

Q. All right. Now, when you went into these premises where

did you first see Bernice Blandon? A. In this hallway.

Q. What, if anything, did she have in her possession? A. She had numbers slips in her hand.

Q. Numbers slips? A. Yes, sir.

* * * * *

81

Thursday,
March 21, 1963

The above-entitled cause came on for further hearing before THE HONORABLE GEORGE L. HART, JR., United States District Judge, without a jury, at 10:00 a.m.

* * * * *

[BY MR. COLLINS:]

121 Q. Well, did you come to identify who the other people were?

A. They were identified as one of the roomers and her daughter.

* * * * *

124

CLAY W. GOLDSTON

* * * * *

125

[Direct Examination by Mr. Smithson:]

126 Q. Where were you and your partner? A. At that time we were standing by the fence at the rear of 134 R Street, Northeast.

Q. What did Jones do when he ran out there? A. When Jones first came out of the premises he -- there was a lady in the back yard hanging out clothes and Jones reached in the basket and picked up a piece of clothes and attempted to hang it up.

At that time I went in, opened the gate, went in the back yard and placed him under arrest.

Q. Did you take him anywhere? A. Yes, I did.

Q. What did the other two defendants, Williams and Washington, do? A. At the time I placed Jones under arrest, defendant Washington stopped and attempted to go back into the basement where he come from and Charley Williams, he came past me. I couldn't stop him. He went back into the rear door on the first floor. He was followed inside by Officer Durham who was with me.

And I arrested Jones and Washington and took them back into the basement.

Q. Did there come a time you later saw the defendant Williams?

A. Yes, there was.

127 Q. Where did you see him? A. After I taken Jones and Washington back into the basement, I turned them over to Sergeant Lockwood and I went back on the first floor to assist Officer Durham.

At that time I observed Williams becoming from underneath some clothes in the closet with Private Durham and we took him back to the basement.

Q. Now, did you have occasion to be observing, Officer Goldston, the defendant Jones while he was in that basement after he had been arrested and returned to that basement?

* * * * *

148 ELLSWORTH DORY

* * * * *

152 CROSS-EXAMINATION

BY MR. WOOD:

* * * * *

154 Q. Now, what other rooms did you go in on the first floor other than this room that you described as a dining room? A. I went in the kitchen and I looked in the closets and --

Q. How many rooms are on the first floor? A. I couldn't recall exactly; I wouldn't be sure.

Q. So is it fair to say that you only went in two rooms? A. No, sir, it isn't.

Q. You told us about the dining room and kitchen and how many closets? A. There were numerous closets in that house.

Q. How many -- your best guess as to how many you went in on the first floor? A. I couldn't pinpoint it, sir.

155 Q. Well, other than the dining room and kitchen, what other rooms did you visit? A. I visited the basement.

Q. I am just talking about now the rooms on the first floor.

THE COURT: Was there a bedroom on the first floor?

THE WITNESS: I don't recall, sir.

THE COURT: A bathroom?

THE WITNESS: (Pause)

THE COURT: If you remember.

THE WITNESS: I don't remember, sir.

THE COURT: All right.

THE WITNESS: Go in so many places. Kind of hard to pinpoint.

BY MR. WOOD:

Q. You can only remember two rooms then that you went in personally? A. I went in more than two rooms, but I couldn't recall, pinpoint the layout of the house.

Q. I understand that but my question is how many rooms on the first floor did you go in other than the two that you have told us about.

A. At one time or another I was in every room in that house.

156 Q. Every room in the entire house? A. At one time or another during the extended search.

Q. During an extended search? A. I mean, during my initial search. I am sorry.

* * * *

157 Q. You were on the second floor? A. Yes, sir.

* * * *

Q. * * *

Did you go in a room on the second floor where there was a man in bed? A. Yes, sir.

Q. Did you find any numbers paraphernalia in that room? Numbers records, slips? A. I didn't, sir.

* * * *

158 Q. Well, you had a conversation with this man, didn't you?

A. As I remember, sir, I asked him to come downstairs and he was explaining to me that he was taking a nap.

* * * *

159 Q. You didn't see any numbers work in his room? A. Not as I recall, sir, I didn't see any.

Q. You asked him to come with you down to the basement? A. Yes, sir.

Q. Let me ask you this, Officer. Did you ask this man in the room on the second floor whether he lived there? A. Yes, sir.

Q. What did he say? A. He said he lived there.

* * * * *

201 MR. WOOD: Anybody living in there, stay in there?

DEFENDANT BLANDON: My daughter.

* * * * *

210 THE COURT: You have four bedrooms and a bath on the second floor?

DEFENDANT BLANDON: That's right.

* * * * *

211 JOHN LOCKWOOD

resumed his seat, having been previously duly sworn, and was further examined and testified as follows:

DIRECT EXAMINATION (Resumed)

BY MR. SMITHSON:

* * * * *

212 Q. Does it list anyone else at that address? A. Yes. it listed Edna Meekins.

Q. Do you know who that is? A. I later found out it is Bernice Blandon's daughter whose name is Edna Vaughn, who told me that it was either a previous marriage or something that she had the name of Meekins.

* * * * *

219 Q. What inquiry did you make and what answer did you get?

220 A. Well, now, Bernice had been upstairs during the most of the time I was in the premises with the other officers who were searching the first and second floor.

After they concluded that search they brought her downstairs and she was the last of the seven people in there that I questioned and talked to.

And they were all sitting right there together and I asked Bernice if this wasn't her house and she said yes, it was.

And I asked her if the telephone was listed in her name and yes, that was true.

And I asked her if she had a rooming house license there and she said no, she had some roomers there, but she didn't have a rooming house license.

I asked her if she knew that by law she was responsible for what went on in her premises, if there was any illegal activity going on in there.

And she said she knew that. And I told her, I said, "You know you don't have to answer any questions if you don't want to. That is your prerogative," I said, "but up to now I have talked to everybody in the place. Nobody knows anything about all these numbers slips and all this paraphernalia and money on this table here."

221 I said, "It looks to me as though it is going to fall right on your shoulders to explain," I said. "You have got it all here and I know that you are not running it all yourself. There are two machines here and a telephone and quite a few slips and I know you can't do it all by yourself."

So she told me that -- oh, I also told her that I didn't think that -- although she wasn't running it by herself, I didn't think everybody that was in the premises was involved in it either.

So I told her that if she wanted to she could explain it to me. She was a little reluctant at first. So I started going around clockwise circle and I started out with Donald Washington and I asked her if he was down there running it and she said yes, he was.

I asked her if the defendant --

THE COURT: Now, wait. I am not sure I got that. Who said yes he was, Washington said that or Blandon said that?

THE WITNESS: No. Bernice said that.

THE COURT: I see.

BY MR. SMITHSON:

Q. What, if anything, did you -- as these questions were asked,

did you do anything with regard to -- shall we say Donald Washington, in that regard?

222 A. Yes, I asked Washington if he heard what she said and he said he heard. I said, "Is that right?"

Q. Did he say anything else? A. He didn't say anything else.

Q. What else did you do? A. I asked her if the defendant Jones was involved in it and she said that he was.

I asked Jones if that was right and he didn't say anything.

Q. How about the defendant Williams? A. I asked her if the defendant Williams was involved. She said he was.

I asked him if that was right and he didn't say anything.

I asked her if one of the roomers, Freeman Davis, who was seated there was involved in it.

She said no, he wasn't involved in it. He worked for the Government. He was off.

I asked Davis if that was right.

He said, "That's right."

There was another roomer there, Louise Colbert. I asked Bernice if she was involved in any way.

She said she was not. She was just a roomer there. I asked Miss Colbert if that was right and she said, "That is correct."

223 I asked Bernice if her daughter Edna had anything to do with it. She said no, she didn't have anything to do with it. She was just living there with her.

And Edna told me the same thing.

I asked Bernice if she had anything to do with processing the slips downstairs or anything to do with what was on that basement table.

She told me that she wrote a few numbers which we had got from her upstairs and they were hers, and the stuff on the table, the money, slips, didn't belong to her, that they belonged to the three men who she rented the place to and who had been there three days in a row and they gave her \$10 a day for the use of the basement.

Q. Who were those three men? A. Washington, Jones, and Williams, and she said that Williams is the one that paid the money.

* * * * *

223

CROSS EXAMINATION

BY MR. WOOD:

* * * * *

226 Q. You say you talked to the two roomers and Bernice's daughter while you were there? A. Yes, sir. I had them -- when they finished the search on the first and second floor --

* * * * *

227 Q. Did you talk to Freeman Davis? A. Yes, sir, I did.

Q. He has a room on the second floor, doesn't he? A. Second floor front, yes, sir.

Q. Did you talk to Louise Colbert? A. Yes, sir.

Q. She has a room on the second floor? A. Second floor front, yes, sir.

* * * * *

231

BY MR. COLLINS:

* * * * *

238 Q. I see. Did you see anything else in the back yard? A. * * *
All I can remember about that back yard was the roomer, Louise Colbert, was out there. There were some clothes on the line and I saw Durham and Goldston bringing the two men down the basement steps.

* * * * *

[Filed Aug. 27, 1963]

242

Washington, D. C.
Monday, March 25, 1963

* * * * *

PROCEEDINGS

* * * * *

249 THE COURT: * * *

250 Now, what do we have here? As I measured this house roughly this morning, it was about 17 1/2 feet wide, 17 to 18 feet wide. As to the depth, of course it's got the kitchen sticking on the back of it but the entire depth of it, I would guess is probably 40 feet. It has one room in the basement. Counting the kitchen and the hall -- well, it has a hall and a bedroom and a little sitting room, and a bigger sitting room and a kitchen on the first floor, and then I think it has four bedrooms and a hall and bathroom on the second floor. This is a fairly small premises really, can't be compared to a loft building or to an apartment house or anything of that sort.

I don't know how you would ever expect the officers in a dwelling house of that type to designate just what room the numbers operation was being carried on in. It could be carried on in any one of them and this is an open place where dogs and people wander around at will without any division into apartments and what not. At least all the part I saw on the first floor was open; and the basement, of course, there is only one room; and the dogs and the people were going back and forth at will.

* * * * *

257 THE COURT: * * *

258 Now, if we can take a small dwelling house like this and insulate it from a legal warrant simply by having them put a couple of roomers in it, we will face the police with a difficult problem indeed. This is essentially one house used for one purpose which is living purposes with a bit of gambling carried on on the side in the basement.

Now, that, I don't think is enough to give it a character that would require particularity in a warrant as to just what part of the house this

operation was being carried on in because I say I don't see, after looking at this house, how in the world the agent could ever have determined that particular fact without going into the house and continuing into the house legally.

* * * * *

262 THE COURT: First we have got this point to dispose of and I will deny Mr. Wood's motion in which the other defendants have joined and hold that a warrant for the entire premises in a house of this nature, which I think in the course of Mr. Wood's argument I have stated the nature of this house, which is essentially a small dwelling house; and I therefore overrule the motions.

* * * * *

[Filed March 25, 1963]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES

vs.

No. 1: CHARLEY WILLIAMS
No. 2: DONALD L. WASHINGTON
No. 3: WILLIAM JONES
No. 4: BERNICE E. BLANDON

)
) Criminal No. 1000-62
) Charge 22 DCC 1501, 1502, 1505
)
)
)
)

[Finding of the Court]

On this 25th day of March, 1963, came again the parties aforesaid; in manner as aforesaid; whereupon the trial by the Court is resumed.

It is adjudged by the Court that the defendant, Charley Williams, is guilty as charged; that the defendant, Donald L. Washington, is guilty as charged; that the defendant, William Jones, is guilty as charged; and that the defendant, Bernice E. Blandon, is not guilty on count one and guilty as charged on count two and three.

The case is referred to the Probation Officer of the Court and each defendant is permitted to remain on bond pending sentence.

The motions to suppress evidence, continued until trial, are by the Court denied.

By direction of
George L. Hart, Jr.
Presiding Judge
Criminal Court # FIVE

* * *

* * *

[Filed March 28, 1963]

Washington, D. C.
Monday, March 25, 1963

Before the HONORABLE GEORGE L. HART, JR., U. S. District
Judge, for further hearing at 10:00 a.m.

* * * * *

2

FINDINGS OF THE COURT

THE COURT: The Court finds that between the period, July 3, 1962 and July 31, 1962, the defendants Williams, Washington and Jones were seen on many occasions entering the premises at 134 R Street, Northeast with paper bags and bulging pockets and were seen to leave without these paper bags and bulging pockets;

That on the 1st day of August, 1962, at approximately 3:30 p.m., under a legal search warrant, various officers of the Metropolitan Police Force executed the warrant by knocking on the front door of the premises at 134 R Street, Northeast, Washington, D. C., and announcing in a loud voice that they had a search warrant that they were executing, that the door of the premises was opened by Bernice Blandon's daughter, Yvonne, that at the time the officers were admitted, made their announcement and were admitted in the front door by Yvonne, officers who had been stationed in the rear of these premises saw Williams, Washington and

Jones flee from the basement of the premises and go into the back yard into a little concrete covered areaway of odd shape and not too large, probably 17 to 18 feet wide, and varying in depth, depending on whether it runs from the cellar door or the kitchen door, the kitchen door projecting back beyond the cellar door; that the officers who went in the front door saw Bernice E. Blandon in the lower hallway with numbers slips in her hand.

- 3 The Court finds that Bernice E. Blandon had such control over the premises that she could either let or sublet it to Williams, Washington and Jones, the basement part of it for use for such purposes as they saw fit to put it to, at \$10.00 per day; that normally it was used, supposed to be used three days a week by Williams, Washington and Jones.

The Court finds that Williams, Washington and Jones actually were concerned as owners and as agents and clerks, and in other ways, in managing a lottery off and on during all of the period from July 3rd, 1962 to August 1st, 1962 in the basement of the premises 134 R Street, Northeast.

The Court finds that on August the 1st, 1962, all four of the defendants, Williams, Washington, Jones and Blandon, had in their possession and under their control notations, records, receipts, tickets, certificates, bills, slips, tokens, papers or writing, current or not current, used in the operation of a lottery, a large amount of material, run-down tapes, numbers slips and adding machines, which are fairly necessary to the operation of a lottery, being found in the basement and seized at the time of the execution of the search warrant; and the Court also finds that on August 1st, 1962, within the District of Columbia, that the three male defendants, Williams, Washington, Jones, and the female defendant, Bernice Blandon, did knowingly, as lessees, agents and occupants, maintain, aid and permit the maintaining of a gambling premises located in the basement of 134 R Street, Northeast.

- 4 The Court therefore finds the defendants Williams, Washington and Jones guilty as charged on Counts 1, 2 and 3.

The Court finds the defendant Bernice E. Blandon not guilty on Count 1 and guilty on Counts 2 and 3.

Now if you gentlemen have any more specific findings which you wish me to make, if you will suggest them, I will consider them at this time. Do you have any specific findings you'd like me to make?

MR. SMITHSON: No, Your Honor.

THE COURT: Mr. Wood?

MR. WOOD: None, Your Honor.

THE COURT: Mr. Hughes?

MR. HUGHES: None, Your Honor.

THE COURT: Mr. Collins?

MR. COLLINS: No, Your Honor.

/s/ G. L. Hart Jr.
JUDGE

March 25, 1963

[Filed May 21, 1963]

JUDGMENT AND COMMITMENT
[WILLIAM JONES]

On this 20th day of May, 1963 came the attorney for the government and the defendant appeared in person and by counsel, William H. Collins, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of Violation of Sections 1501, 1502, 1505, Title 22 D.C. Code as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Six (6) Months to Eighteen (18) Months on Count 1; Six (6) Months on Count 2, to run concurrently with the sentence imposed on Count 1; Six (6) Months on Count 3, to run concurrently with the sentences imposed on Counts 1 and 2.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ G. L. Hart Jr.
United States District Judge

[Filed May 21, 1963]

JUDGMENT AND COMMITMENT
[DONALD L. WASHINGTON]

On this 20th day of May, 1963 came the attorney for the government and the defendant appeared in person and by counsel, James K. Hughes, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of Violation of Sections 1501, 1502, 1505, Title 22 D.C. Code as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year to Three (3) Years on Count 1; One (1) Year on Count 2, to run concurrently with the sentence imposed on Count 1; One (1) Year on Count 3, to run concurrently with the sentences imposed on Counts 1 and 2.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ G. L. Hart Jr.
United States District Judge

[Filed May 21, 1963]

JUDGMENT AND COMMITMENT
[CHARLEY WILLIAMS]

On this 20th day of May, 1963, came the attorney for the government and the defendant appeared in person and by counsel, Kenneth Wood, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of Violation of Sections 1501, 1502, 1505, Title 22 D.C. Code as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Eight (8) Months to Twenty Four (24) Months on Count 1; Eight (8) Months on Count 2, to run concurrently with the sentence imposed on Count 1; Eight (8) Months on Count 3, to run concurrently with the sentences imposed on Counts 1 and 2.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ G. L. Hart Jr.
United States District Judge

[Filed May 29, 1963]

NOTICE OF APPEAL
[CHARLES WILLIAMS]

Name and address of appellant

Charles Williams
222 - Madison St., N. W.

Name and address of appellant's attorney

Kenneth Wood

Offense - Title 18 - 1501 - 1502, D.C. Code

Concise statement of judgment or order, giving date, and any sentence

5/20/63 - 8-24-Months - on all counts

Name of institution where now confined, if not on bail

Bail

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

5/29/63
Date

/s/ Charles Williams
Appellant

/s/ Kenneth Wood
Attorney for Appellant.

[Filed May 29, 1963]

NOTICE OF APPEAL
[DONALD WASHINGTON]

Name and address of appellant

Donald Washington
222 Madison St., N. W.

Name and address of appellant's attorney

James K. Hughes
2022 R St., N. W.

Offense - Operating a lottery - Title 18, 1501, 1502

Concise statement of judgment or order, giving date, and any sentence

5/20/63 - 1-3 yrs. - on all counts.

Name of institution where now confined, if not on bail

On bail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

5/28/63
Date

/s/ Donald L. Washington
Appellant

/s/ James K. Hughes
Attorney for Appellant.

[Filed May 29, 1963]

NOTICE OF APPEAL
[WILLIAM JONES]

Name and address of appellant

William Jones
1901 Second Street, N. E., Washington, D. C.

Name and address of appellant's attorney

William H. Collins
844 Shoreham Building, Washington 5, D. C.

Offense - Gambling, 22 D.C.C. 1501, et seq.

Concise statement of judgment or order, giving date, and any sentence

Six Months to Eighteen Months - May 20, 1963

Name of insitution where now confined, if not on bail

On Bail

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

May 29, 1963
Date

/s/ William Jones
Appellant

/s/ William H. Collins
Attorney for Appellant

BRIEF AND SUPPLEMENTAL APPENDIX FOR APPELLEE

**United States Court of Appeals
For the District of Columbia Circuit**

Nos. 18,075
18,076
18,077

CHARLEY WILLIAMS, DONALD L. WASHINGTON,
WILLIAM JONES, *Appellants,*

v.

UNITED STATES OF AMERICA, *Appellee.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED NOV 26 1963

Nathan J. Paulson
CLERK

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
FREDERICK G. SMITHSON,
GERALD A. MESSERMAN,
Assistant United States Attorneys.

QUESTIONS PRESENTED

In the opinion of appellee, the following questions are presented:

1) Whether a warrant which authorizes a search of the entire premises at a given address sufficiently describes the place to be searched, where the place described is a private, single-family dwelling which has not been licensed as a rooming house, where the police are able to determine only after they enter the structure that one room of the house is rented, and where the police could not have determined which part of the dwelling was being used for gambling purposes without actually entering the dwelling?

2) Whether an affidavit which contains facts demonstrating the operation of a gambling establishment and which asserts that an individual, upon six occasions, was observed entering a dwelling with his pockets bulging and leaving with his pockets empty, that he was seen in the company of others engaging in similar activity, and that he had previously been arrested for operating a lottery, is sufficient to establish probable cause for the issuance of a warrant for the arrest of that individual?

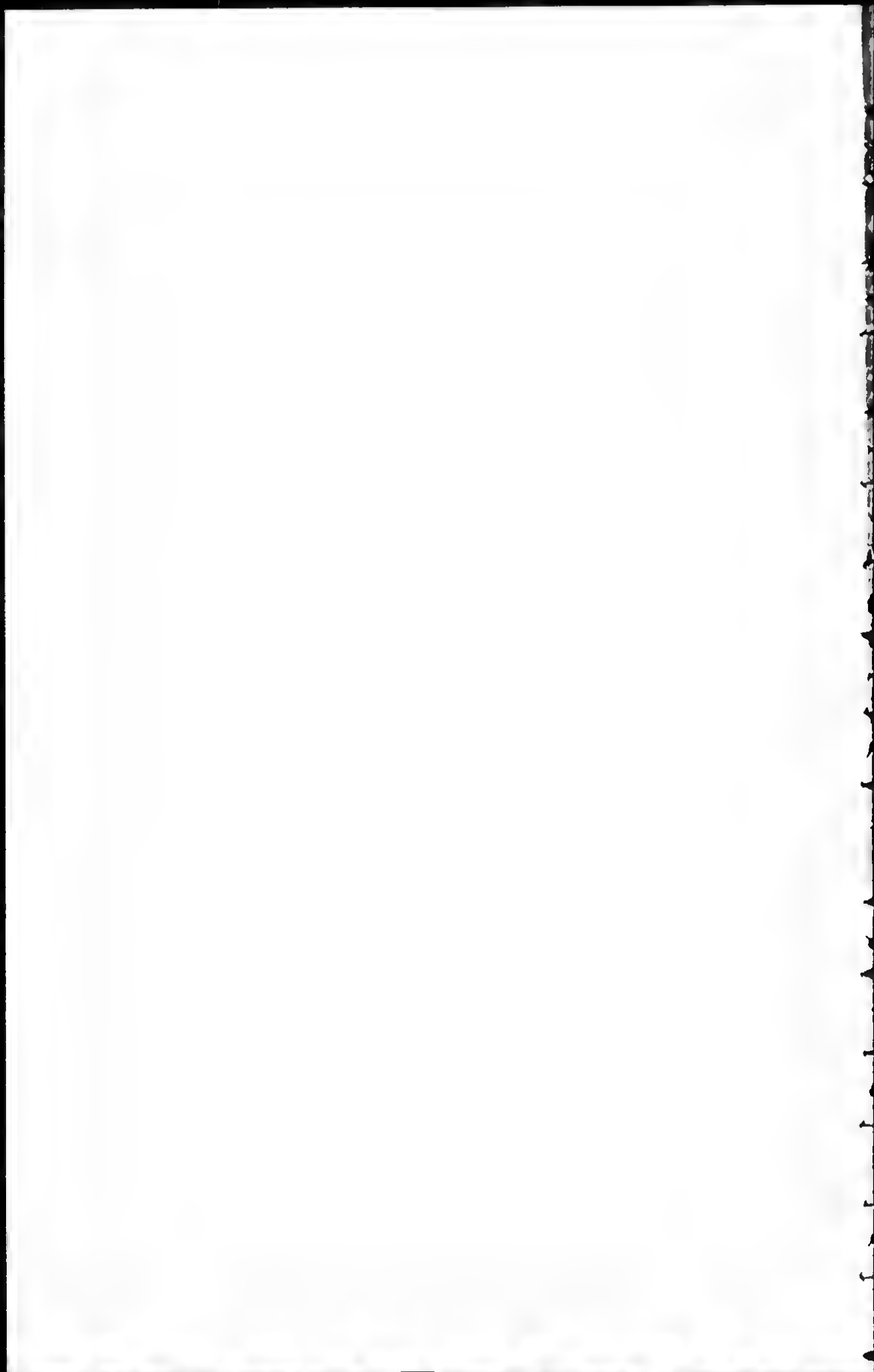
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* Cases chiefly relied upon.



**United States Court of Appeals
For the District of Columbia Circuit**

Nos. 18,075
18,076
18,077

CHARLEY WILLIAMS, DONALD L. WASHINGTON,
WILLIAM JONES, *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA*

BRIEF AND SUPPLEMENTAL APPENDIX FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

In a three-count indictment filed November 26, 1962, appellants and one co-defendant were jointly charged with the operation of a lottery, possession of numbers slips, and maintaining gambling premises. 22 D.C. Code §§ 1501, 1502, 1505 (J.A. 4-5). Jury trial was waived, appellants were tried by the court, and they were found guilty as indicted. (J.A. 6, 22-23). Appellant Jones was sentenced to serve a period of imprisonment of six to eighteen months, appellant Washington to serve one to three years, and appellant Williams to serve eight to twenty four months. (J.A. 23-25).

Between July 3rd and July 31st of 1962, two officers of the Metropolitan Police Department conducted an investigation of suspicious conduct of appellants and of activities carried on at 134 R Street, Northeast. During that period, they observed appellants arrive at the house at 134 R Street on numerous occasions, check carefully to determine whether they were being watched, enter the premises with bulging pockets, and leave with their pockets empty. Appellants were seen taking numbers slips from unidentified persons. At least four times during this period, appellant Jones was observed entering 134 R Street with bulging pockets.¹ (App. 1-8). The structure located at 134 R Street is a single-family, two-story row house approximately 18 feet wide and forty feet in depth. (J.A. 19). A telephone address directory listed co-defendant Bernice Blandon and her daughter as the sole occupants of the premises. (Tr. 211-12). The structure was not licensed as a rooming house. (J.A. 16).

Based upon an affidavit containing a detailed account of the observations made by the police officers during their investigation, a search warrant was issued for the entire premises at 134 R Street, Northeast, occupied by Bernice Blandon, and warrants were obtained for the arrests of appellants. (Tr. 248; J.A. 2-7; App. 1-8). On August 1, 1962, six officers went to 134 R Street for the purpose of executing the warrants. (Tr. 36). Upon arriving, four officers went to the front door and two to the rear door. One of the officers knocked on the front door and announced his authority and purpose. (Tr. 37). The door was opened and the officers were admitted to the premises. (Tr. 38). As the officers entered, they immediately observed co-defendant Blandon with numbers slips in her hand. (Tr. 39).

¹ Although appellant Jones attacks the sufficiency of the affidavit upon which the warrant for his arrest was issued, he has made no effort to bring that affidavit before this Court. The entire contents of the affidavit were before the trial court on the stipulation of all three appellants that the officers who signed the affidavit, if called upon to testify, would state the facts averred in the affidavit. (Tr. 7-9, 291). The affidavit has been included as an Appendix to appellee's brief.

An officer identified himself and placed her under arrest. She then opened the door leading to the basement and said, "If you will just give me a chance to put my dress on, Officer, why I will go with you." (Tr. 216). The officer heard "the scrambling of feet" in the basement. (Tr. 13). Two officers stationed at the rear of the premises saw appellants run from the basement. Appellants were apprehended and returned to the basement from which they had emerged. (Tr. 125-27).

The search of the premises which followed resulted in the seizure of gambling paraphernalia found in the basement and on the first floor.² In the course of the search, the officers were informed that a man and a woman rented a room on the second floor of the premises. (Tr. 227). Nothing was seized from that room or from any part of the second floor. (Tr. 157).

At the conclusion of all the evidence, the trial court made the following *unchallenged* findings:

The Court finds that between the period, July 3, 1962 and July 31, 1962, the defendants Williams, Washington and Jones were seen on many occasions entering the premises at 134 R Street, Northeast with paper bags and bulging pockets and were seen to leave without these paper bags and bulging pockets.

* * * *

The Court finds that Bernice E. Blandon had such control over the premises that she could either let or sublet it to Williams, Washington and Jones, the basement part of it for use for such purposes as they saw fit to put it to, at \$10.00 per day; that normally it was used, supposed to be used three days a week by Williams, Washington and Jones.

The Court finds that Williams, Washington and Jones actually were concerned as owners and as agents and clerks, and in other ways, in managing a lottery off and on during all of the period from July 3rd, 1962 to August 1st, 1962 in the basement of the premises 134 R Street, Northeast.

² Tr. 64, 71, 79, 84, 86, 95, 102, 150, 173, 181-85.

The Court finds that on August the 1st, 1962, all four of the defendants, Williams, Washington, Jones and Blandon, had in their possession and under their control notations, records, receipts, tickets, certificates, bills, slips, tokens, papers or writing, current or not current, used in the operation of a lottery, a large amount of material, run-down tapes, numbers slips and adding machines, which are fairly necessary to the operation of a lottery, being found in the basement and seized at the time of the execution of the search warrant; and the Court also finds that on August 1st, 1962, within the District of Columbia, that the three male defendants, Williams, Washington, Jones, and the female defendant, Bernice Blandon, did knowingly, as lessees, agents and occupants, maintain, aid and permit the maintaining of a gambling premises located in the basement of 134 R Street, Northeast.

The Court therefore finds the defendants Williams, Washington and Jones guilty as charged on Counts 1, 2 and 3.

The Court finds the defendant Bernice E. Blandon not guilty on Count 1 and guilty on Counts 2 and 3. (J.A. 21-23).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Title 22, District of Columbia Code, Section 1501 provides:

If any person shall within the District keep, set up, or promote, or be concerned as owner, agent, or clerk, or in any other manner, in managing, carrying on, promoting, or advertising, directly or indirectly, any policy lottery, policy shop, or any lottery, or shall sell or transfer any chance, right, or interest, tangible or intangible, in any policy lottery, or any lottery or shall sell or transfer any ticket, certificate, bill, token, or

other device, purporting or intended to guarantee or assure to any person or entitle him to a chance of drawing or obtaining a prize to be drawn in any lottery, or in a game or device commonly known as policy lottery or policy or shall, for himself or another person, sell or transfer, or have in his possession for the purpose of sale or transfer, a chance or ticket in or share of a ticket in any lottery or any such bill, certificate, token, or other device, he shall be fined upon conviction of each said offense not more than \$1,000 or be imprisoned not more than three years, or both. The possession of any copy or record of any such chance, right, or interest, or of any such ticket, certificate, bill, token or other device shall be prima-facie evidence that the possessor of such copy or record did, at the time and place of such possession, keep, set up, or promote, or was at such time and place concerned as owner, agent, or clerk, or otherwise in managing, carrying on, promoting, or advertising a policy lottery, policy shop, or lottery.

Title 22, District of Columbia Code, Section 1502 provides:

If any person shall, within the District of Columbia, knowingly have in his possession or under his control, any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing, current or not current used or to be used in violating the provisions of section 22-1501, 22-1504, or 22-1508, he shall, upon conviction of each such offense, be fined not more than \$1,000 or be imprisoned for not more than one year, or both. For the purpose of this section, possession of any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing shall be presumed to be knowing possession thereof.

Title 22, District of Columbia Code, Section 1505(b) provides:

It shall be unlawful for any person in the District of Columbia knowingly, as owner, lessee, agent, employee, operator, occupant, or otherwise, to maintain or aid or permit the maintaining of any gambling premises.

SUMMARY OF ARGUMENT**I**

A warrant which authorizes the search of an entire single-family dwelling sufficiently describes the place to be searched. The Fourth Amendment's requirement of specificity does not impose upon the police the impossible burden of determining the portion of such a dwelling being used for unlawful purposes as a prerequisite to obtaining a warrant. A warrant is adequate if the description conforms to the outward appearance of the dwelling and enables a police officer to locate the place to be searched with reasonable effort. In the instant case, the warrant satisfied those requirements.

II

The warrant for appellant Jones' arrest was based upon probable cause. The affidavit upon which that warrant was issued disclosed facts which demonstrated an intricate pattern of behavior by Jones and others which strongly supported the conclusion that he was conducting an unlawful gambling operation.

ARGUMENT**I. The search warrant adequately described the place to be searched.**

On August 1, 1962, six officers of the Metropolitan Police Department went to a house located at 134 R Street, Northeast, with a warrant to search that house, and warrants to arrest appellants. (Tr. 36). When the officers arrived at their destination, appellants were arrested and the house at 134 R Street was searched. (Tr. 125-27; J.A. 14-15). At trial, gambling paraphernalia seized from the basement and first floor of the residence was admitted over appellants' objection.

Appellants do not challenge the sufficiency of the affidavit upon which the search warrant was issued. Nor do they assert that the warrant was improperly executed. Their sole objection to the warrant is that "it did not

'particularly' describe the premises searched." (Br. 5). The objection is unavailing.

The warrant authorized a search of the entire premises at 134 R Street, Northeast, occupied by Bernice Blandon. (J.A. 7). The structure located at that address is a two-floor, single-family row house approximately eighteen feet wide and forty feet in depth. Before applying for the warrant, the police checked a telephone address directory to determine who occupied the premises. Only co-defendant Blandon and her daughter were listed as occupants. (Tr. 211-12). No rooming license had been issued for the premises. (J.A. 16).

Based upon the outward appearance of the premises and upon information regarding its occupancy, the police were plainly justified in concluding that it was a private, single-family dwelling. In *Minoritz v. United States*, 112 U.S. App. D.C. 21, 298 F. 2d 682 (1962), this Court rejected the argument that a warrant which authorizes a search of the entire premises of such a dwelling does not sufficiently describe the place to be searched. The holding in *Minoritz* is dispositive of the identical assertion made here. The Fourth Amendment's requirement of specificity is satisfied if the warrant describes the place intended to be searched with sufficient certainty to enable the officer executing the warrant to identify and locate the place with a reasonable degree of effort. *Steele v. United States*, 267 U.S. 498 (1925). Where the place to be searched is, to all outward appearances, a single-family dwelling, it is sufficient to describe the place solely by its address. *United States v. Santore*, 290 F. 2d 51, 66-67 (2d Cir. 1960), *cert. denied*, 365 U.S. 834 (1961); *Townsend v. United States*, 253 F. 2d 461, 464-65 (5th Cir. 1958). Even in those cases where the place to be searched is a part of a multiple-dwelling structure, it has been held that a description by address is adequate. *Kenney v. United States*, 81 U.S. App. D.C. 259, 157 F. 2d 442 (1946) (description by address held adequate despite fact that building contained two apartments); *Shore v. United States*, 60 App. D.C. 137, 49 F. 2d 519 (1931) (description of commercial building solely by ad-

dress held sufficient); *United States v. Castle*, 213 F. Supp. 52 (D.C.D.C. 1962) (address of three-story apartment held to be adequate description of place to be searched).

United States v. Epstein, 33 F. 2d 982 (E.D. N.Y. 1929), relied upon by appellants, is entirely inapposite to the facts in the instant case. In *Epstein*, a warrant described the place to be searched only by address. The structure located at the address given was a "loft building" at least four stories in height. The premises which might legitimately have been searched occupied only a part of the fourth floor. In those circumstances, the description by address was obviously too general. In the instant case, however, the place to be searched was a private, single-family dwelling. Compare *United States v. Hinton*, 219 F. 2d 324 (7th Cir. 1955). The police had no way of determining the part of the premises being used for unlawful purposes without actually entering the dwelling. The description in the warrant was as precise as it could be in the circumstances.

Appellant's contention that the warrant is invalidated by the fact that the police discovered that one room of the house was occupied by roomers is absurd. The police were not advised of this dual occupancy until they entered. On its face, the warrant was in accord with the outward appearance of the residence. That is sufficient. Appellants do not gain immunity from search by virtue of the presence of innocent persons in one room of a private dwelling being used for unlawful purposes. *United States v. Santore, supra*. Furthermore, since nothing was seized from the room occupied by the roomers, appellant's have absolutely no ground for complaint. *Shore v. United States, supra*. The trial court properly denied appellants' motion to suppress.

II. The warrant for the arrest of appellant Jones was based upon an affidavit which asserted facts sufficient to establish probable cause.

Appellant Jones asserts that the facts contained in the affidavit sworn to before the United States Commissioner were not sufficient to establish probable cause. He has made no effort to bring that affidavit before this Court. On that ground alone, his contention should be rejected. See *Wade v. United States*, 104 U.S. App. D.C. 135, 259 F. 2d 950 (1958). Furthermore, the relevance of his contention is not at all clear. As Jones recognizes, nothing was seized from his person. (Br. 3). The seizure of the gambling paraphernalia found on the premises was authorized by the search warrant; the validity of Jones' arrest had absolutely no relevance to the lawfulness of that seizure. Thus, even assuming that there was some merit to Jones' contention, he would be entitled to no relief.

Apart from these preliminary obstacles which appellant Jones, makes no attempt to surmount or explain, the most cursory analysis of the affidavit upon which the warrant for his arrest was based demonstrates its sufficiency. Jones was observed four times entering the premises at 134 R Street, Northeast. (App. 2, 4, 6, 9). His pockets were bulging when he entered and empty when he left. He was seen in the company of others who entered and left the premises in similar circumstances. (App. 2-9). He had previously been arrested for operating a lottery. (App. 9). The affidavit disclosed overwhelming evidence of an intricate pattern of behavior by Jones and others—evidence which strongly supported the conclusion that they were conducting an illegal gambling operation. Upon very similar facts, this Court stated in *Minovitz v. United States*, *supra*, 112 U.S. App. D.C. at 22, 298 F. 2d at 683:

The officers went about their duties in a manner which gives the appellant no legal ground for successfully challenging the validity of the warrants. For a period of several weeks the officers who obtained the warrants made a careful investigation of suspicious conduct of appellant and of activities carried on at the

premises in question. On the basis of the information received and their personal observations, as set forth in the affidavit submitted to the United States Commissioner who issued the warrants, the officers had probable cause to conclude that appellant was engaged in illegal gambling operations, and that the premises were being used to conduct an illegal gambling enterprise. See *Jones v. United States*, 362 U.S. 257, 267-72, *remanded on other grounds*; *Henry v. United States*, 361 U.S. 98, 102; *Washington v. United States*, 92 U.S. App. D.C. 31, 32, 202 F. 2d 214, 215, *cert. denied*, 345 U.S. 956.

Those conclusions apply with equal force to the facts in the instant case.

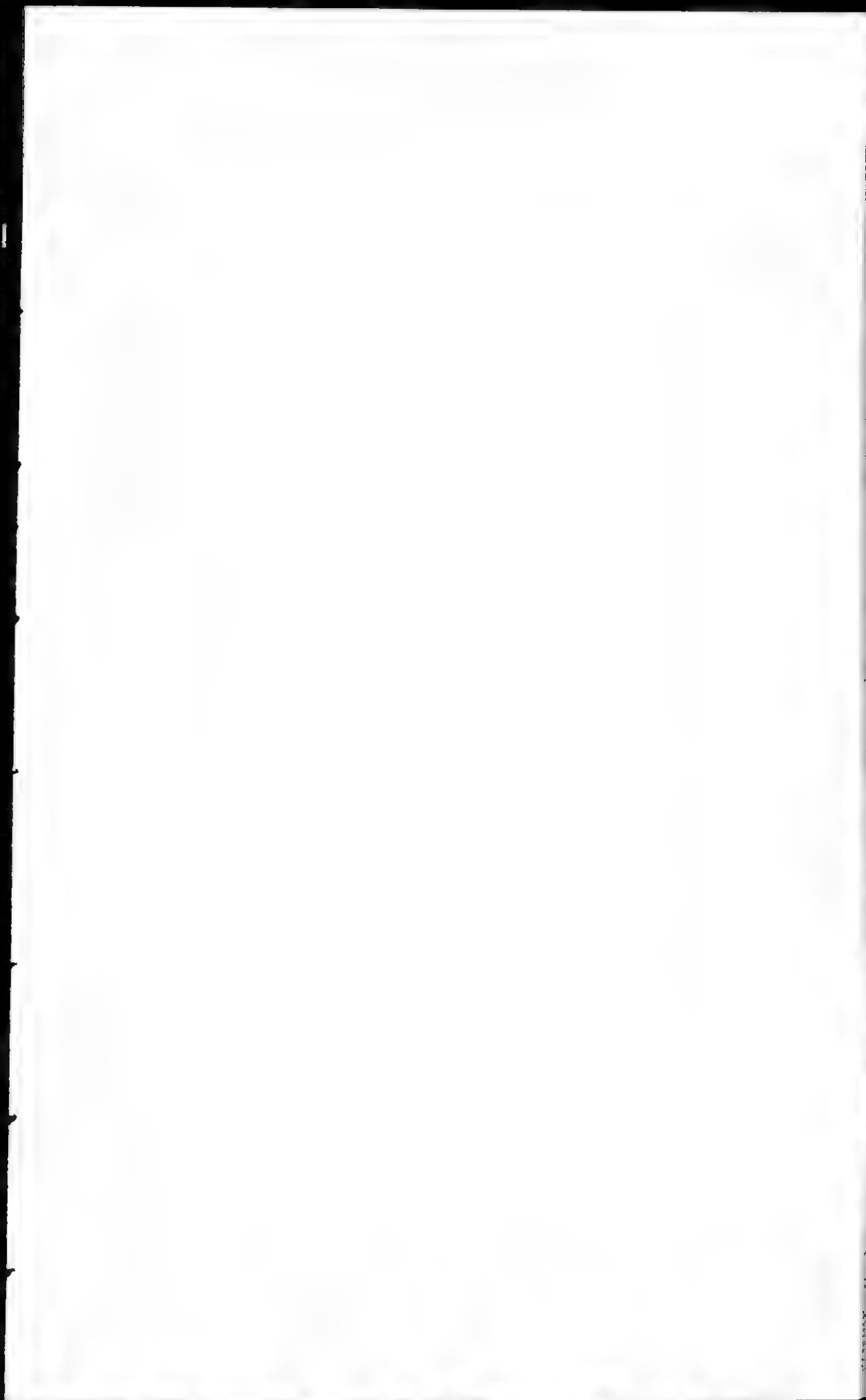
CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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APPENDIX



APPENDIX*

Statement of facts relative to the request for United States District Court Search Warrants for premises 134 R Street, N.E., Washington, D. C. and premises 1521 9th Street, N.W., Washington, D. C. (Entire premises) and United States District Court Arrest Warrants for individuals named below, for violation of the D.C. Lottery Laws.

Search Warrants

Premises 134 R St., N.E.; Washington, D. C. (entire premises) occupied by Blandon, Bernice, as shown by the records of the 1962 Washington Address Telephone Directory.

Premises 1521 9th St., N.W.; Washington, D. C. (entire premises) occupied by Blandon, Bernice, as shown by the records of the 1962 Washington Address Telephone Directory.

Arrest Warrants

Charley Williams, N/M, 49 yrs; 5'10", 210 lbs; Brown Skin.

Donald Lawrence Washington, N/M, 39 yrs; 5'9", 175 lbs; Brown Skin, wears glasses.

William Jones, N/M, 59 yrs; 5'8", 170 lbs; Brown Skin.

STATEMENT OF FACTS

Having received reliable information that Charley Williams was picking up numbers in the 1500 block of 9th Street, N.W., Pmts. Clay W. Goldston & Julious Durham, Morals Division were assigned to make an investigation.

At about 1:00 P.M. July 3, 1962 Pmts. Goldston and Durham observed Charley Williams to depart premises 1521 9th St., N.W. carrying a brown paper bag. He walked over to a 1959 Pontiac MD. tags DF 53-82 and put the

* Typographical errors and misspellings which appear herein are those which appeared in the original copy of the affidavit.

paper bag he was carrying into the trunk of this auto. Williams then entered this auto and was followed by Pvts. Goldston & Durham to the 300 blk. of You St., N.W., where he parked. He remained seated in auto for about 5 minutes looking all around as if to see if anyone were following him; afterwhich he left the same and entered premises 323 You St., N.W. At about 2:20 P/M this same date Williams left premises 323 You St., N.W. with bulging pockets, entered the Pontiac with Md. tags DF 53-82 and drove off. Pvts. Goldston and Durham followed Williams to the 2300 block of 8th Street, N.W. He left the auto walked through the alley to the 2300 block of Georgia Ave., N.W., where he was observed to contact a number of unidentified persons in this area. These person were observed to give Williams small slips of white paper which Williams put into his pants pocket. Williams departed this area at about 2:35 P.M., and was followed by the officers to the 700 block of Harvard Street, N.W. He parked and left the auto with pockets bulging and walked to an alley in the 700 block of Harvard Street, N.W. where he contacted an unidentified N/M. This N/M was observed to give Williams a brown envelope which Williams put into his pocket, and walked back to the auto. He was then followed by the two officers from this area to the 100 block of R Street, N.E., where he parked in the alley. He took a brown paper bag from the trunk of the Pontiac wich MD. tags DF 53-82 and entered premises 134 R Street, N.E. from the rear still carrying the brown paper bag and pockets bulging. At about 3:15 P.M. this same date William Jones was observed to park a 1956 Plymouth with D.C. tags # RB 658 in the alley behind the 100 block of R St., N.E. Jones left this auto with bulging pockets and entered the rear of premises 134 R Street N.E. At about 3:40 P.M. this same date Donald L. Washington was observed to park a 1955 Plymouth with D.C. tags # PJ 225 in the 1700 block of 1st St., N.E. He left the same with bulging pockets and entered the rear of premises 134 R Street, N.E. At about 5:50 P.M. this same date Pvts. Goldston and Durham took up observations again in the vicinity of 1st & R Streets, N.E.

At about 5:40 P.M. same date Charley Williams was observed to depart premises 134 R. Street, N.E. from the rear not carrying anything, he entered the Pontiac with Md. tags #DF 53-82 and departed the area. At about 5:45 P.M. same date Washington and Jones were observed to depart premises 134 R Street, N.E. from the rear not carrying anything, at which time Pvts. Durham & Goldston discontinued observations.

Where the initials (N/M) are used on this page and throughout this affidavit they are referring to Negro Male.

At about 2:20 P.M. July 5, 1962, Pvts. Durham & Goldston observed Charley Williams to depart premises 323 You St., N.W. with bulging pockets. He entered the auto with Md. tags #DF 53-82 and departed the area. The Officer followed Williams to 2300 block of 8th St., N.W., where he parked. He left the auto walked thru the alley to the 2300 block of Georgia Ave., N.W., where he was observed to contact a number of unidentified persons. These persons were observed to give Williams small white slips of paper which Williams was observed to put into his pants pockets. At about 2:35 P.M. Williams left this area and was followed by Pvts. Durham & Goldston to the 700 block of Harvard St., N.W., where he parked. He left the auto with bulging pockets and entered an alley in this block, where he was observed to contact an unidentified N/M. This N/M was observed to give Williams a small brown envelope which Williams put into his pocket. Williams left the alley walked back to the Pontiac with Md. tags #DF 53-82 entered same, and departed the area. He was followed by Pvts. Durham & Goldston to the 300 block of You St., N.W., where he parked. He left the auto with bulging pockets and entered premises to 323 You St., N.W. He remained in the same about 5 min. came out with pockets still bulging entered the a Pontiac and drove off. The Officers followed him to the alley behind the 100 block of R St., N.E., where he parked. He left the same took a brown paper bag from the trunk, and entered premises 134 R St., N.E. by the rear entrance carrying the brown paper bag; and with both front pants pockets bulg-

ing. At about 3:25 P.M. this same date William Jones was observed to park the Plymouth with D.C. tags # RB 658 in the alley behind the 100 block of R St., N.E. He left the same with bulging pockets and entered the rear of premises 134 R St., N.E. At about 3:50 P.M. this same date Donald L. Washington was observed to park the Plymouth with D.C. tags # PJ 225 in the 1700 block of 1st. St., N.E. He left the same with bulging pockets and entered the rear of 134 R St., N.E. At about 3:55 P.M. Pvts Durham & Goldston discontinued observations in this vicinity. At about 5:20 P.M. this same date Pvts. Durham and Goldston again took up observations in the vicinity of 1st & R Sts., N.E. At about 5:30 P.M. Jones was observed to depart premises 134 R St., N.E. from the rear and depart the area. At about 5:35 P.M. same date Charley Williams was observed to depart the rear of premises 134 R St., N.E. not carrying anything. He entered the auto with Md. tags # DF 53-82 and departed the area. At about 2:45 P.M. same date Donald Washington left the rear of premises 134 R St., N.E. not carrying anything, at which time Pvts. Goldston & Durham discontinued observations in this vicinity.

At about 2:20 P.M. July 6, 1962, Pvts. Goldston & Durham observed Charley Williams to depart premises 323 U St., N.W. with bulging pockets. He entered the Pontiac with Md. tags # DF 53-82 and departed the area. Pvts. Durham & Goldston followed Williams to the 2300 block of 8th St., N.W. where he parked. He left the auto and walked to the 2300 block of Georgia Ave., N.W., where he was observed to contact several unidentified persons. The unidentified persons were observed to give Williams small slips of paper which Williams put into his pants pocket. Williams left this area at about 2:40 P.M. and went to the 700 block of Hobert St., N.W., where he entered an alley and was lost from observations. Pvts. Godston & Durham left this area and took up observations in the vicinity of 1st & R Sts. N.E. At about 3:15 P.M. Donald Washington was observed to park the Plymouth with D.C. tags # PJ 225 in the 1700 block of 1st St., N.E. He left the same with

bulging pockets and entered the rear of premises 134 R St., N.E. At about 3:30 P.M. this same date Charley Williams was observed to park in the alley behind the 100 block of R St., N.E. He left the auto took a brown paper bag from the trunk of same and entered the rear of premises 134 R. St., N.E. carrying the paper bag. At about 3:35 P.M. the Officers discontinued observations on premises 134 R St., N.E. and Williams & Washington were still in same.

At about 2:20 P.M. July 19, 1962, Pvts. Durham & Goldston observed Charley Williams to depart premises 323 You St., N.W. with bulging pockets. He entered the Pontiac with Md. tags # DF 5382 and departed the area. The Officers followed Williams to the 2300 block of 8th St., N.W., where he parked. He left the auto with bulging pockets and walked to the 2300 block of Georgia Ave., N.W., where he was observed to contact a number of unidentified persons. These persons were observed to give Williams small slips of white paper which Williams put into his pants pockets. Williams left this area at about 2:40 P.M. and went to the 700 block of Hobart St., N.W., where he contacted an unidentified N/M. This N/M was observed to give Williams a small brown envelope which Williams put into the right pocket of his pants, afterwhich he departed the area. Pvts Goldston and Durham followed Williams from this area to the alley behind the 100 block of R. St., N.E. Williams parked in this alley, left the auto took a brown paper bag from the trunk of same, and entered premises 134 R St., N.E. by the rear entrance with bulging pockets and still carrying the brown paper bag. At about 3:30 P.M. this same date Donald L. Washington parked the Plymouth with D.C. tags # PJ 225 in the 1700 block of 1st St., N.E. He left the auto with bulging pockets and entered the rear of premises 134 R St., N.E. At this time the Officers noticed that the Plymouth with D.C. tags # PB 658 was parked in the 100 block of R St., N.E. On previous dates this auto was operated by William Jones.

At about 2:45 P.M. July 20, 1962, Pvts. Goldston & Durham observed Charley Williams to contact an unidentified N/M in the alley in 700 block of Harvard St., N.W. This unidentified N/M was observed to give Williams a small brown envelope which Williams put into his pocket. Williams then entered the Pontiac with Md. tags # DF 53-82 parked in this area and drove off. Pvts. Goldston followed Williams to the 100 block of R St., N.E., where he parked in the alley. He left the auto took a brown paper bag from the trunk of same, and entered the rear of premises 134 R St., N.E. still carrying the paper bag. At about 3:30 P.M. this same date William Jones was observed to park the 1956 Plymouth with D.C. tags # RB 658 in the same alley. He left the same with bulging pockets and entered the rear of premises 134 R St., N.E. At about 3:50 P.M. this same date Donald L. Washington parked the Plymouth with D.C. tags # PJ 225 in the 700 block of 1st St., N.E. He left the same with bulging pockets and entered the rear of 134 R St., N.E. At about 3:55 P.M. Pvts. Goldston & Durham discontinued observations on premises 134 R St., N.E. At about 5:20 P.M. this same date Pvts. Durham and Goldston again took up observations on premises 134 R St., N.E. At about 5:30 P.M. same date William Jones was observed to depart the rear of 134 R St., N.E. not carrying anything and depart the area. At about 5:45 P.M. this date Charley Williams & Donald L. Washington were observed to depart the area of 134 R St., N.E. not carrying anything at which time Pvts. Goldston & Durham departed the area.

At about 1:00 P.M. July 24, 1962, Pvts. Durham & Goldston observed Charley Williams to leave premises 1521 9th St., N.W. carrying a brown paper bag. Williams went to a 1956 Imperial D.C. tags # PC 836 and put the paper bag in the trunk of this auto, entered same and drove off. Pvts. Durham & Goldston followed Williams from this area to the 300 block of You St., N.W. Williams parked in this block and sat in the same about 5 min. looking all around as if to see if anyone were following him. He left this auto and entered premises 323 You St., N.W. with bulging pockets. He remained in the same until about 2:20 P.M.

came out with pockets still bulging entered the Imperial and drove off. Pvts. Durham & Goldston followed him to the 2300 block of 8th St., N.W., where he parked. He left the auto and walked to the 2300 block of Georgia Ave., N.W. He contacted several unidentified N/M in this block and the unidentified persons were observed to give Williams small slips of white paper. Williams was observed to put the white slips of paper into his pants pocket. At about 2:45 P.M. Williams left this area and went to the 700 block of Hobart St., N.W. He drove in an alley in this area stayed a few min, came out into Harvard St., N.W., and departed the area. Pvts. Durham followed Williams to the 1300 blocks of Mass. Ave., S.E., where he parked. Williams left the Imperial took a brown paper bag from the trunk and walked to an alley in the 1300 block of Mass. Ave., S.E. and entered a house near the corner of the alley but the officers were unable to see which house he entered. At about 3:35 P.M. this same date William Jones parked the plymouth with D.C. tags # PB 658 in the 1300 block of Mass Ave., S.E. entered an alley in this area and was lost from observations. At about 3:50 P.M. this same Pvts. Durham & Goldston observed Donald Washington to park the 1955 Plymouth with D.C. tags PJ 225 at the corner of 14th & A Sts., S.E. He left the same with bulging pockets went to the same alley and was lost from observation. At about 4:00 P.M. the Officers discontinued observations in this vicinity and the aforementioned persons hadn't departed the premises entered earlier. At about 5:20 P.M. same date Pvts. Goldston & Durham returned to the 1300 block of Mass. Ave., S.E. At about 5:45 P.M. same the Officers observed Williams, Jones and Washington to come from the same alley they had entered earlier and depart the area. When the came from the alley at 5:45 P.M. none of them were carrying anything.

At about 1:10 P.M. July 25, 1962, Pvts. Durham & Goldston observed Charley Williams to depart premises 1521 9th, N.W. carrying a brown paper bag. He walked to the 1956 Imperial D.C. tags # PC 836 put the bag in turnk of same entered auto and drove to to the 300 block of You

St., N.W., where he was observed to park and enter 323 You St., N.W. At about 2:20 P.M. same date Williams left premises 323 You St., N.W. with bulging pockets. He entered the auto with D.C. tgas # PC 386 and drove off. He was followed by Pvts. Durham & Goldston to the 2300 block of 8th Street, N.W., where he parked. He left the auto with bulging pockets and walked to 2300 block of Georgia Avenue, N.W., where he was observed to contact a number of unidentified persons. These persons were observed to give Williams small slips of white paper which Williams put into his pants pocket. William left this at about 2:45 P.M., at which time the Officers left this vicinity and set up where they could make observations in the 1300 block of Mass. Ave., S.E. At about 3:30 P.M. Williams was observed to park the Imperial with D.C. tags # PC 836 in the 1300 block of Mass Ave., S.E. entered the same alley carrying a brown paper bag as on the previous date and was lost from observation. At about 3:40 P.M. Jones parked the auto with D.C. tags RB 658 in the 1300 block of Mass. Ave., S.E. left same with bulging pockets, entered the same alley and was lost from observation. At this time the officers discontinued observations.

At about 1:00 P.M. July 31, 1962 Pvts. Durham & Goldston observed Charley Williams to depart premises 1521 9th St., N.W. carrying a brown paper bag. He walked across the street to the 1956 Imperial D. C. tags P C 836 which was parked in the 1500 block of 9th Street, N.W. and was observed to put the paper bag into the trunk. Williams was followed by the Officers to the 300 block of You St., N.W., where he parked and entered premised 323 You Street, N.W. At about 2:20 PM same Charley Williams was observed by Durham and Goldston to depart 323 You St., N.W. with bulging poclets. He got into the 1956 Imperial D.C. tags # PC 836 and was followed by the two officers to the 2300 block of 8th St., N.W., where he parked and walked to the 2300 block of Ga. Ave., N.W., where he was observed to contact several unidentified persons who were observed to give Williams small white slips of paper. Williams departed this area at about 2:40 P.M. with bulg-

ing pockets. He was followed to the 700 block of Harvard Street, N.W., where he parked and a unidentified N/M was observed to get into the car with Williams. This unidentified subject right front pants pockets was bulging. Williams drove to the corner of Ga. Ave., and V St., N.W. where the unidentified N/M departed the car minus the bulging pocket. Williams was followed to the 300 block of You St. N. W. where he parked and entered premises 323 You St., N.W. with bulging pockets. He departed these premises shortly with his pockets still bulging. Williams got back into the 1956 Imperial and drove off. He was followed to the alley in the rear of the 100 block of R St., N.E., where he parked, departed the car, took a brown paper bag out of the trunk of the car and was observed by the two Officers to enter premises 134 R St., N.E. still carrying the paper bag and the bulging pockets at 3:00 P.M. At about 3:10 P.M. same date William Jones was observed to park the 1956 Plymouth D.C. tags # RD 658 in the alley of the rear of the 100 block of R St., N.E. Jones departed the car with bulging pockets and walked to and entered premises 134 R St., N.E. from the rear. At about 3:20 P.M. same date Donald Washington was observed to park the 1955 Plymouth in the 100 block of R St., N.E., where he departed same with bulging pockets and walked to and entered premises 134 R St., N.E. from the rear. At about 5:30 P.M. same date Officers Durham & Goldston observed Williams Jones to depart premises 134 R. St., N.E. from the rear. He got into his car and departed the area. At about 5:45 P.M. same Charley Williams & Donald Washington were observed by the two Officers to depart 134 R St., N.E. from the rear without a paper bag or bulging pockets, and depart the area.

Further investigations revealed that Charley Williams was arrested on February 2, 1960 for Operating Lottery. Donald Lawrence Washington was arrested on October 27, 1945, November 26, 1945, December 19, 1949, September 20, 1956 and July 10, 1959 for Operation Lottery. William Jones was arrested on July 10, 1959 for Operating a Lottery.

As a result of the information received, and the observation of the Officers, they are of the firm belief that all the aforementioned or described persons are now actively engaged in the operation of a lottery, commonly referred to as the numbers game.

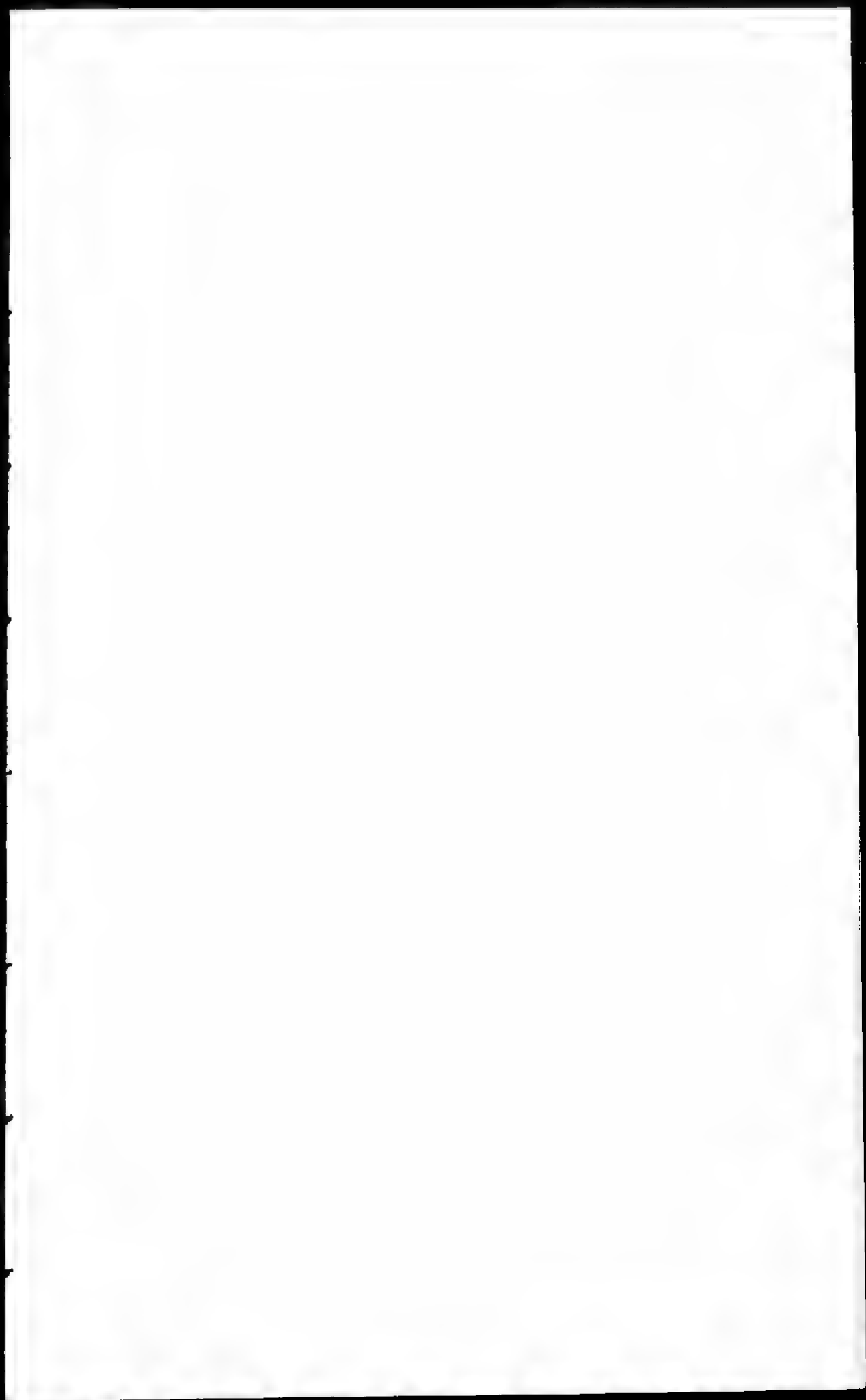
The Officers also firmly believe that on all occasions where bulging pockets, and paper bags are mentioned, they contained numbers slips or other number paraphernalia, and the Officers believes further, that there is now being concealed in premises 134 R St., N.E. and 1521 9th St., N.W., numbers slips, and/or other numbers paraphernalia, used in the setting up, promoting or maintaining of a policy lotter, all of which is contrary to, and in violation of the Lottery Laws of the District of Columbia.

Subscribed and sworn to before me this 1st day, of August, 1962

.....
Pvt. Julious Durham, Morals Division

.....
Pvt. Clay W. Goldston, Morals Division

.....
United States Commissioner for the District of Columbia



MOTION FOR REHEARING

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 18075-6-7

CHARLEY WILLIAMS,
DONALD L. WASHINGTON,
WILLIAM JONES,

Appellants,

v.

UNITED STATES OF AMERICA.

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 15 1964

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 18075-6-7

CHARLEY WILLIAMS,
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Appellants,

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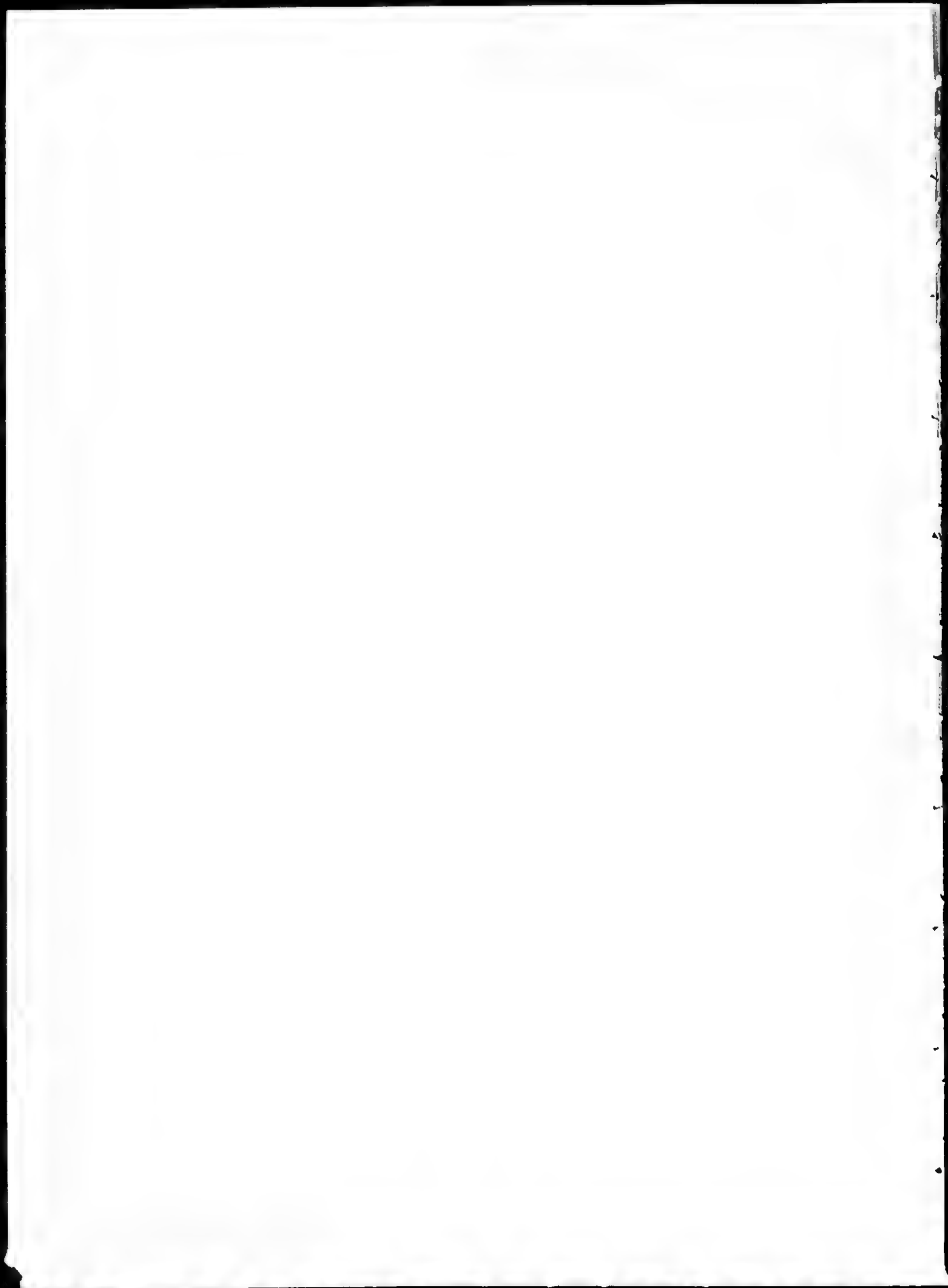
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOTION FOR REHEARING

JURISDICTIONAL STATEMENT

This Motion for Rehearing is brought under the authority of Rule 26 of this Court, enlargement of time for the filing of said Motion having been heretofore granted by this Court and stay of Mandate to the Lower Court having been directed.



STATEMENT

This Court under order of judgment entered on December 17, 1963 affirmed Appeal had in the above causes by order of judgment in which two cases are cited, namely Minovitz v. U.S., 112 U.S. App. D.C. 21, 298 F.2d 682 (1962) and U.S. v. Santore, 290 F.2d 51 (2d Cir. 1960).

This Motion for Rehearing is based upon Appellants' contention that the two cases cited in the judgment, supra, are not analogous to the picture presented here in connection with a general warrant for the search of an entire premises.

This Motion is made also as to the Appellant Jones in the light of questions propounded to his counsel by Sr. Circuit Judge Edgerton at the time of hearing on the appeal, in which interrogation it is respectfully urged that Sr. Circuit Judge Edgerton had a misconception as to the right of exploratory search incident to the serving of a warrant of arrest.

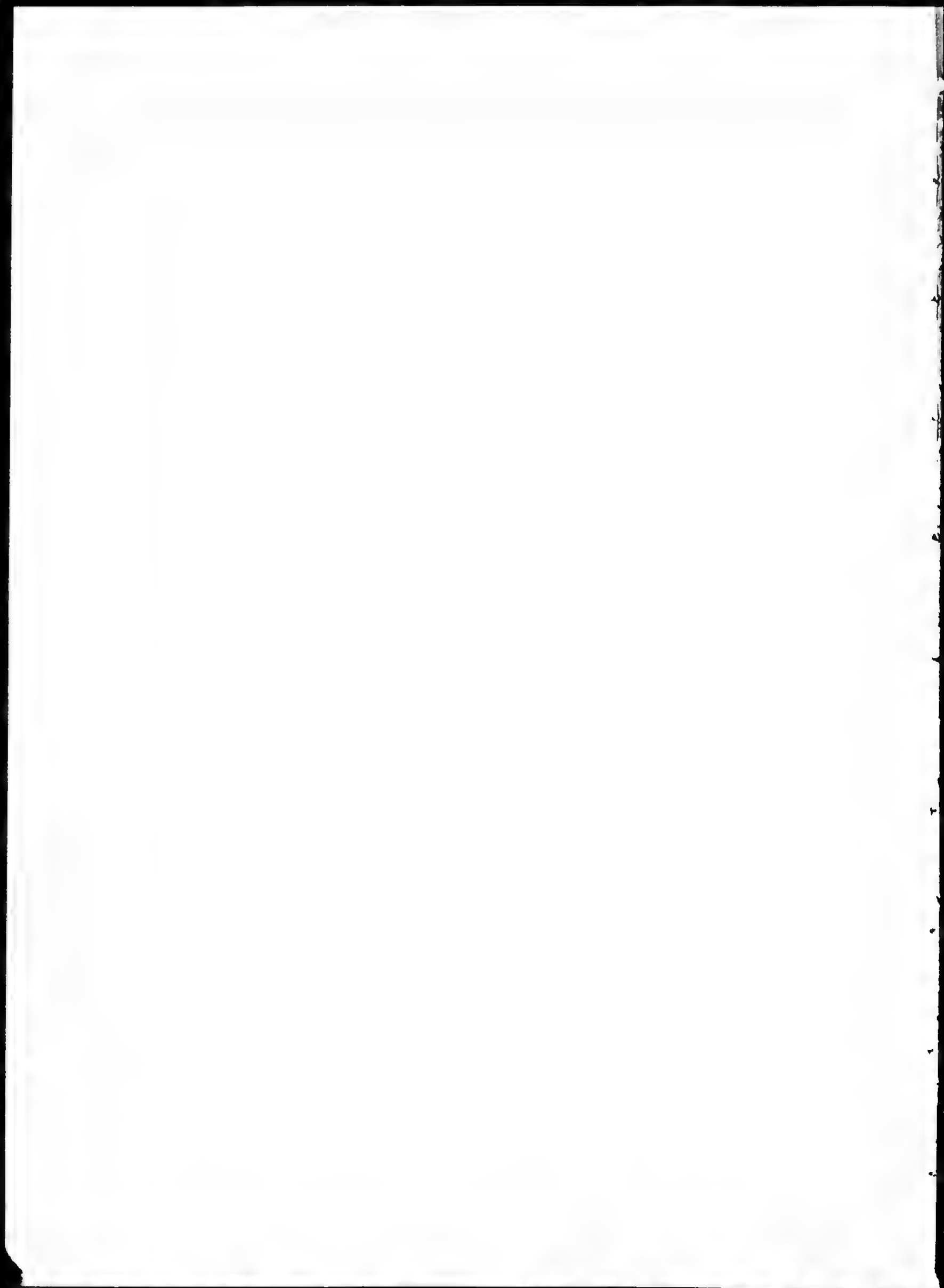
ARGUMENT

Point 1

This Court in its judgment based its affirmance of the conviction below on the suggested authority of Minovitz v. U.S., 112 U.S. App. D.C. 21, 298 F.2d 682 (1962) and U.S. v. Santore, 290 F.2d 51 (2d Cir. 1960).

It is respectfully urged to the Court that there is no parallel between the Minovitz case and the instant case.

The Minovitz case, supra, is distinguishable in the sense that even from the viewpoint of the search warrant evidence was presented at the trial that the police on two occasions prior to the search had made inquiry as to the occupancy of the building and on both occasions their investigation had revealed that the house was a private dwelling and not an apartment or rooming house.



This Court further pointed out in that case when the police entered the premises and went to the room on the attic floor where the Appellant Minovitz was apprehended they had with them a warrant of arrest which they then served on Minovitz and moreover that incident to the arrest they located the material that had been offered in evidence against the Appellant.

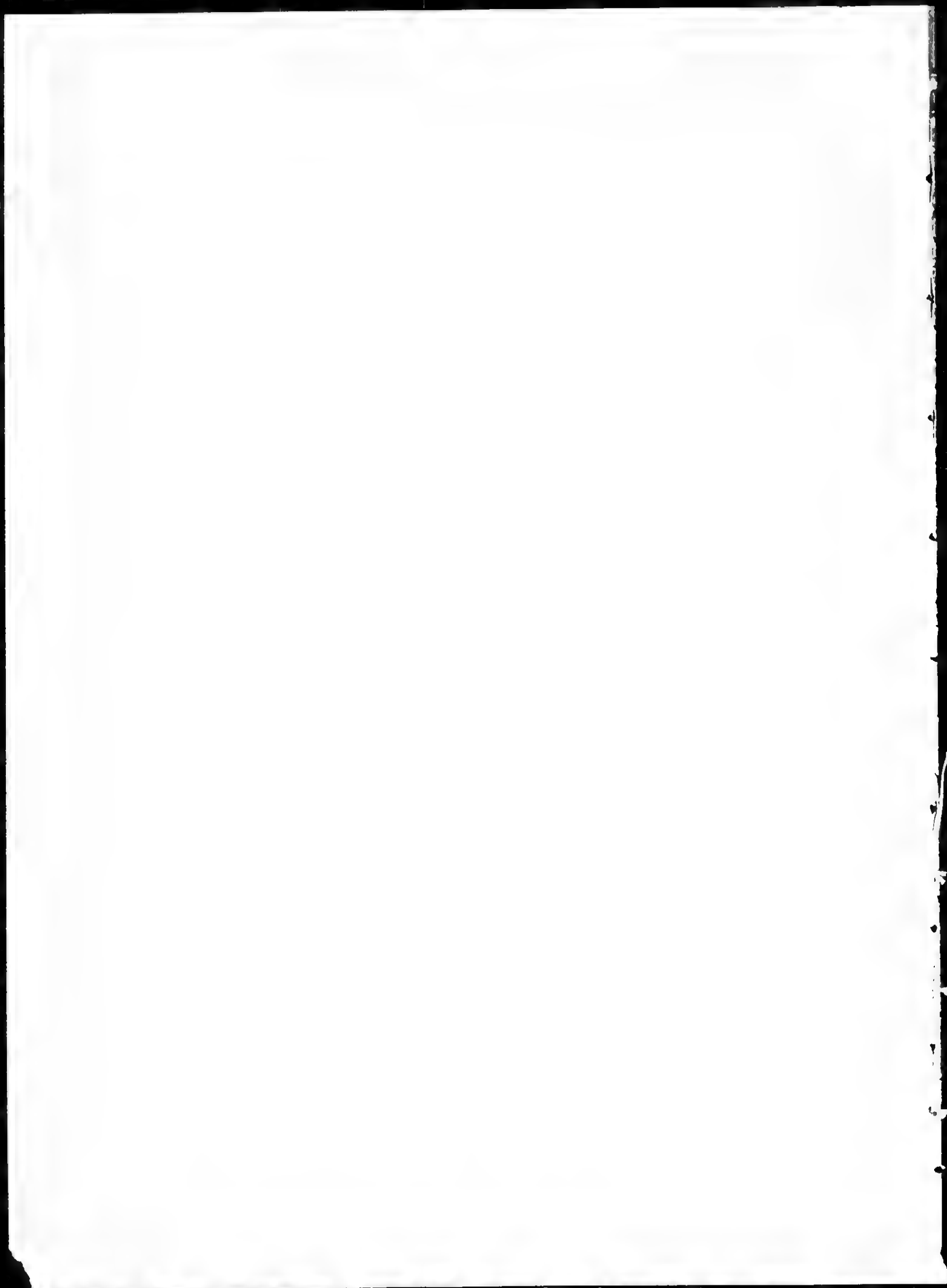
The record in this case as far as the Appellant Jones at least is concerned showed definitely that the Defendant Jones was arrested in the yard in which no search of his person was made and nothing on or about him in the yard was found suggesting a support for any violation of law.

In the case of U.S. v. Santore, supra, there is presented a factual picture that is vastly different from that in the instant case.

The opinion points out that on two occasions the agents observed that shortly after a light went on in the second floor of the house a package subsequently found to contain narcotics was carried out. As to the Appellant's contention in the Santore case that the warrant described the premises in too general language, the Second Circuit in its opinion indicated that the description was in accordance with the actual appearance of the structure and in view of the evidence which disclosed that Orlando had caused interior alterations to be made without the necessary permits, it would be absurd to say that the Government was on notice as to it. Further in this Santore case it is pointed out that it was too late for the purposes of the raid to have retreated and obtained a new warrant because of the re-arrangements that had been accomplished by the Appellant Orlando without their notice.

In this instant case it is clear of record that no preliminary investigation or observation of the premises had been made with reference to the house at least in reference to the interior of said premises.

The Appellants would direct the attention of this Court to an earlier case of the Seventh Circuit, namely, U.S. v. Hinton (7 Cir., 1955) 219 F.2d 324, 326, in which the conviction was reversed because of the



identical general language that is contained in the warrant in this case. The Court in this case (Hinton) states:

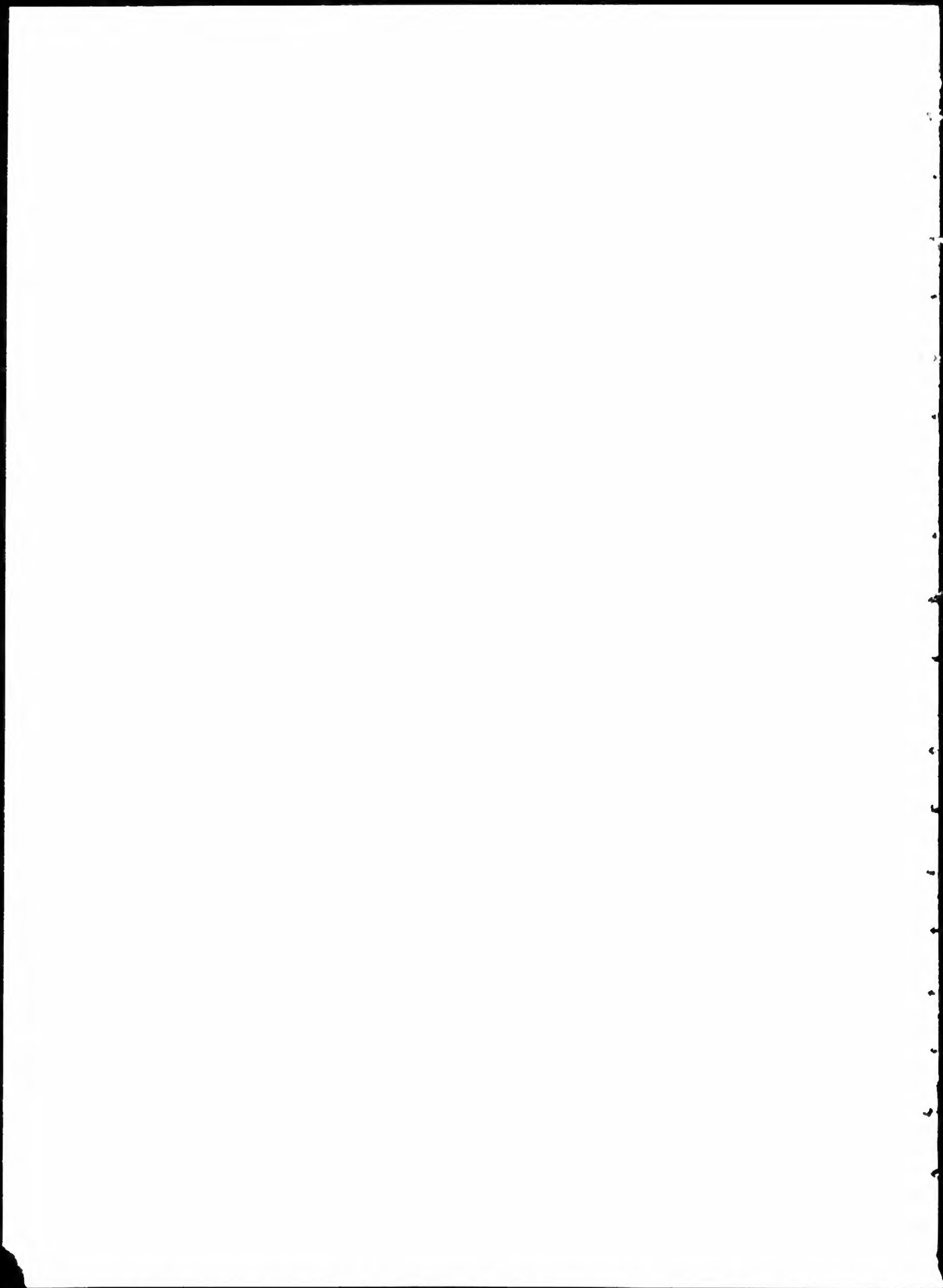
"It may well be that the affidavit showed probable cause to search the residences of the four women referred to, provided they could be accurately identified from the aliases given. But the affidavit does not establish probable cause to search the entire building without the allegation of facts to show that each of the apartments in the building was the residence of at least one of the persons alleged in the affidavit to have been seen selling narcotics. The record in this case discloses an affidavit establishing probable cause to search the residences of four persons referred to by aliases, and a warrant directing the search of an entire apartment building consisting of four apartments. There is nothing to connect the two except the fact that the narcotics were sold somewhere in the building. On the basis of the affidavit the Commissioner had nothing before him to justify a search of all of the residences at 6423 Champlain Avenue."

Point 2

At the hearing had on this Appeal counsel for the Appellant Jones was interrogated at some length by Senior Judge Edgerton about the arrest of the Appellant Jones in the yard outside of the premises and from which location he was forced to come into the house by the police and to the location where the paraphernalia suggesting gambling operations was located in the basement of said house.

The record clearly points out that at the time of the arrest in the yard the police making the arrest made no search of the person or the immediate surrounding of the Appellant Jones.

The result of this action by the police was to permit the use of evidence already seized under a search warrant out of the presence of the Appellant Jones against Jones in support of the charges contained in the indictment. This Court in McKnight v. U.S., 87 U.S. App. D.C. 151, 183 F.2d 977, in a very well considered opinion written by then Circuit Judge Edgerton points out fundamental law that is found in all



jurisdictions, i.e., that an arrest may not be used as a pretext to search for evidence.

Moreover, Circuit Judge Edgerton at page 152 of this Court's report with reference to contentions of government counsel, stated:

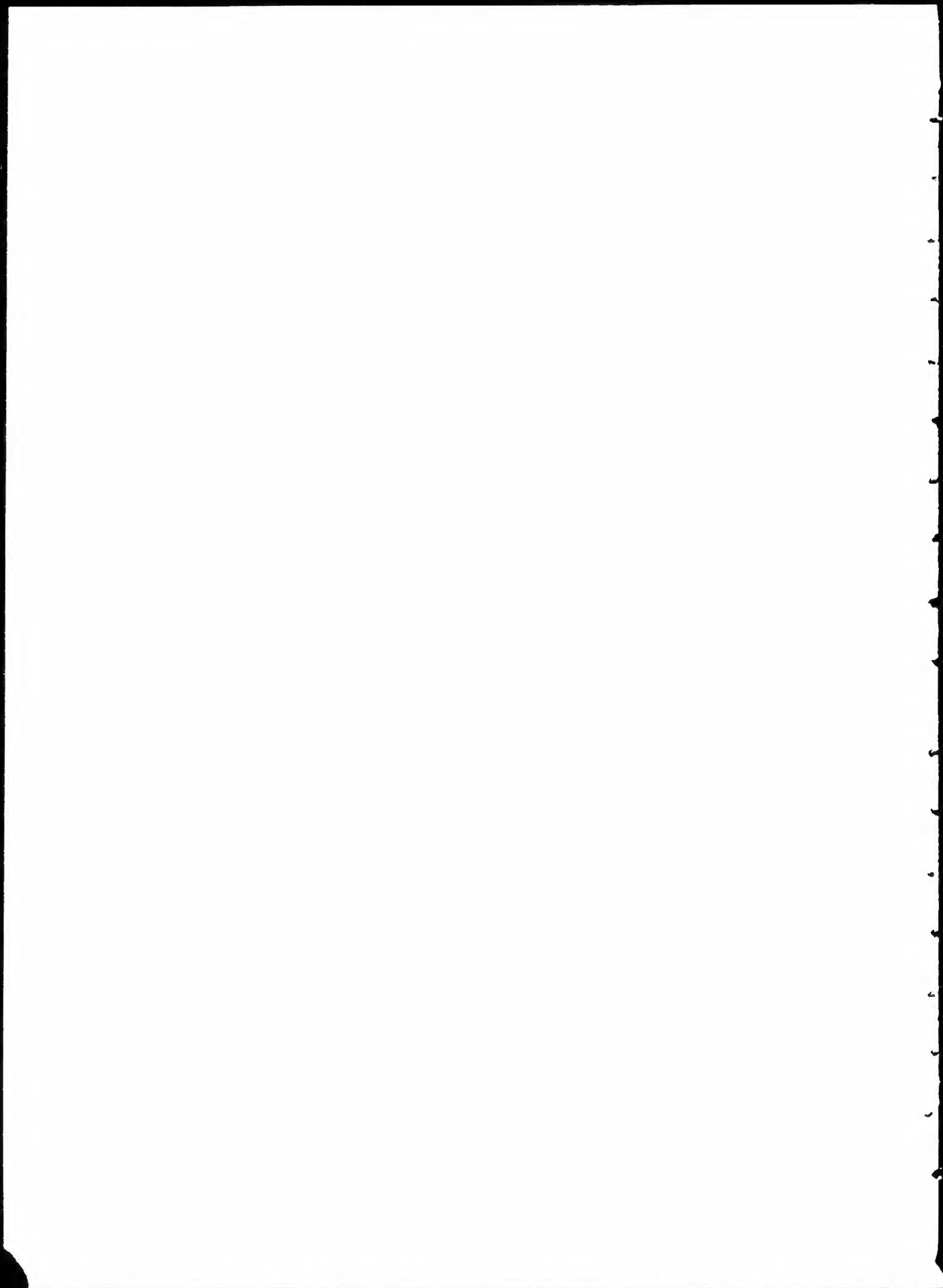
"'Police strategem', waiting until McKnight was in a locked house before arresting him justified the police in breaking into the house in order to arrest him and seize evidence. We think this untenable. 'The right to break open a door to make an arrest requires something more than the mere right to arrest'."

In this instant case the Appellant Jones was arrested in the yard under circumstances that the arresting officer knew that the other officers had already entered the premises under the search warrant and without any search of Jones brought him into the house and into the presence of gambling paraphernalia that they were then seizing.

Judge Edgerton in his opinion further quoting from the Rabinowitz case in the Supreme Court said:

"The relevant test is * * * whether the search was reasonable. That criterion in turn depends upon the facts and circumstances -- the total atmosphere of the case. United States v. Rabinowitz, 339 U.S. 56, 66, 70 S.Ct. 430, 435."

In addition to the McKnight case, supra, the Appellant Jones directs the attention of this Honorable Court to U.S. v. Lefkowitz, 285 U.S. 452, 467, 52 S.Ct. 420, 424, 76 L.Ed. 877, 82 A.L.R. 775.



CONCLUSION

For the reasons above set forth it is respectfully urged that the judgment heretofore heard in this cause be vacated and Rehearing be granted or new judgment in favor of Appellants entered.

Respectfully submitted,

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